



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



ALL MATERIAL NONCIRCULATING

CALL NUMBER	VOLUME	COPY
Y4.In8 H:89	Serial 44-49	

AUTHOR

House Committee on Interstate and  
Foreign Commerce: 89th Congress

TITLE

Hearings

NAME AND ADDRESS


TACK-4





74.1.1

11:5







**Part 1**  
**FAIR PACKAGING AND LABELING**

---

---

**HEARINGS**  
**BEFORE THE**  
**COMMITTEE ON**  
**INTERSTATE AND FOREIGN COMMERCE**  
**HOUSE OF REPRESENTATIVES**  
**EIGHTY-NINTH CONGRESS**

**SECOND SESSION**

**ON**

**H.R. 15440, S. 985**

**AND SIMILAR BILLS RELATING TO FAIR PACKAGING**  
**AND LABELING**

---

**JULY 26, 27, 28, 29; AUGUST 2, 3, 4, 16, 17, 18, 23, 24, 25, 30, 31;**  
**SEPTEMBER 1, 7, 8, 1966**

---

**Serial No. 89-44**

---

**Printed for the use of the**  
**Committee on Interstate and Foreign Commerce**



**U.S. GOVERNMENT PRINTING OFFICE**  
**WASHINGTON : 1966**

COMMITTEE ON INVESTIGATION AND REFORM

MEMORANDUM FOR THE CHAIRMAN  
SUBJECT: [Illegible]  
[Illegible text follows, appearing to be a list of items or a report summary.]

RECOMMENDATIONS  
[Illegible text follows, likely containing specific recommendations or conclusions.]

# CONTENTS

<b>Hearings held on—</b>	<b>Page</b>
July 26, 1966.....	1
July 27, 1966.....	71
July 28, 1966.....	173
July 29, 1966.....	223
August 2, 1966.....	269
August 3, 1966.....	307
August 4, 1966.....	359
August 16, 1966.....	409
August 17, 1966.....	449
August 18, 1966.....	479
August 23, 1966.....	523
<b>Text of—</b>	
S. 985.....	2
H.R. 15440.....	7
<b>Report of—</b>	
Agriculture, Department of, on S. 985.....	12
Budget, Bureau of the, on S. 985, H.R. 15440, and H.R. 15707.....	14
General Services Administration on S. 985.....	14
Justice, Department of, on S. 985 and H.R. 15440.....	13
Labor, Department of, on S. 985 and H.R. 15440.....	13
Treasury, Department of the, on S. 985, H.R. 15440, and H.R. 15707.....	14
<b>Statement of—</b>	
Banzhaf, Max, staff vice president, Armstrong Cork Co.....	607
Bristol, Norman, general counsel and secretary, Kellogg Co.....	523
Buller, Mrs. Carter, Customer Relations Department, Scott Paper Co.....	594
Byset, Fred, attorney, Chamber of Commerce of the United States.....	607
Cohen, Hon. Wilbur J., Under Secretary, Department of Health, Education, and Welfare.....	31, 61, 92, 174
Connor, Hon. John T., Secretary of Commerce.....	31, 61, 92; 973 (pt. 2)
Dent, Hon. John, a Representative in Congress from the State of Pennsylvania.....	223
Dixon, Hon. Paul Rand, Chairman, Federal Trade Commission.....	31, 61, 92, 174; 973 (pt. 2)
Dunham, Miss Ellen-Ann, vice president in charge of General Foods kitchens.....	568
Ellenbogen, Theodore, Assistant General Counsel (Legislation), Department of Health, Education, and Welfare.....	92, 174
Farbstein, Hon. Leonard, a Representative in Congress from the State of New York.....	19
Farnum, Hon. Billie S., a Representative in Congress from the State of Michigan.....	225
Gamble, Theodore R., chairman of the board and chief executive officer, Pet Milk Co.....	550, 566
Gathings, Hon. E. C., a Representative in Congress from the State of Arkansas.....	409
Gilbert, Gerald E., Office of General Counsel, Department of Commerce.....	174
Goodrich, William W., Assistant General Counsel (Food and Drug), Department of Health, Education, and Welfare.....	92, 174
Greiner, Fred J., chairman of the Dairy Industry Committee, and executive vice president of the Evaporated Milk Association.....	454
Habberton, Benjamin G., counsel, Dairy Industry Committee.....	454

## Statement of—Continued

Halpern, Hon. Seymour, a Representative in Congress from the State of New York	Page 270
Hekman, Edward J., president, Keebler Co.	479
Helstoski, Hon. Henry, a Representative in Congress from the State of New Jersey	26
Hoge, James F., on behalf of The Proprietary Association	465
Holloway, Fuller, counsel, Toilet Goods Association	510
Howard, Hon. James J., a Representative in Congress from the State of New Jersey	71
Jennan, Malcolm W., Manager, Engineering Standards, and Chief, Office of Weights and Measures, National Bureau of Standards, Department of Commerce	174
Kastmiller, Hon. Robert W., a Representative in Congress from the State of Wisconsin	78
Larkin, Arthur E., Jr., executive vice president, General Foods Corp.	568
Lave, Hon. Rodney M., a Representative in Congress from the State of Ohio	85
McLabe, Thomas B., Jr., vice president, Scott Paper Co.	594
McCarthy, Hon. Richard D., a Representative in Congress from the State of New York	88
McGrath, Hon. Thomas G., a Representative in Congress from the State of New Jersey	28
May, Hon. Catherine, a Representative in Congress from the State of Washington	277
Minter, Hubert W., vice president, Minter Bros., Bridgeport, Pa., appearing in behalf of the National Confectioners Association	359
Mitchell, Hon. William S., a Representative in Congress from the State of Pennsylvania	228
Mott, Mrs. Anita, representing Cosmetic Career Women	510
Murphy, William P., president, Campbell Soup Co.	419
Nelson, Mrs. Helen, California State Consumer Counsel	229
Noy, Rayon, staff assistant to Hon. Seymour Halpern	270
Olsen, William P., attorney, Armstrong Cork Co.	607
Olsen, Hon. Arnold, a Representative in Congress from the State of Montana	173
O'Neill, Hon. Thomas P., Jr., a Representative in Congress from the State of Massachusetts	21
Orringer, Hon. Richard L., a Representative in Congress from the State of New York	90
Patten, Hon. Edward J., a Representative in Congress from the State of New Jersey	15
Peterson, Mrs. Esther, Special Assistant to the President for Consumer Affairs	31, 61, 92, 174
Rankin, William R., Deputy Commissioner, Food and Drug Administration	92, 174; 973 (pt. 2)
Holl, Lyb O., chairman of the board and president, Kellogg Co.	523
Rosenthal, Hon. Benjamin S., a Representative in Congress from the State of New York	53
Schmidbauer, Hon. John E., a Representative in Congress from the State of Iowa	25
Schmiedt, Harry F., vice president for packaging, National Biscuit Co.	293, 350
Smith, Milan D., executive vice president, National Canners Association	307
Stallbaum, Hon. Lynn E., a Representative in Congress from the State of Wisconsin	77
Thompson, Hon. Frank, a Representative in Congress from the State of New Jersey	87
Vauk, Hon. Charles A., a Representative in Congress from the State of Ohio	18
Williams, Edward Brown, counsel, National Association of Frozen Food Packers	384
Wolfe, Hon. Lester L., a Representative in Congress from the State of New York	449
Wright, Arthur E., Jr., director of public relations, Potlitz Co.	550, 566



# CONTENTS

V

Additional material supplied for the record by—

California Department of Agriculture: Regulations concerning retail sale of commodities in standard size containers.....	Page 263
Campbell Soup Co.: Proposed amendments to section 5(c) and 5(c)(4) - Chamber of Commerce of the United States: Letter dated August 29, 1966, re administrative agencies' actions overruled by appellate courts.....	424
Commerce, Department of: Charts illustrating simplification by standardization.....	617
Federal Trade Commission:	33-37
Letter dated August 10, 1966, re applicability of the Administrative Procedure Act to the regulationmaking procedures specified in S. 985 and H.R. 15440.....	191
Proposed redraft of S. 985.....	192
Letter dated September 6, 1966, re procedures followed by Federal Trade Commission in prosecuting laws it administers.....	218
General Foods Corp.: Letter dated August 26, 1966, re slack filling..	593
Kastenmeier, Hon. Robert W.: Model rules and regulations on weights and measures for States adopted by the National Conference on Weights and Measures.....	81
Keebler Co.: Cost summary of packaging equipment and operating costs for new products.....	490
Kellogg Co.:	
Effects of requirement that all family-size cereal packages contain 8 or 16 ounces net weight, study conducted February 22, 1966...	532
Letter dated September 9, 1966, re comparison between South African and Mexican subsidiaries' packaging costs.....	537
Table 1.—Family size packing equipment used by Mexican and South African subsidiaries of Kellogg Co., 1964 (table).....	541
Table 2.—Product sizes marketed by Kellogg Co. of South Africa and Mexico, 1964 (table).....	541
Minter, Robert W.: Telegram quoting from Supermarket News, March 15, 1965.....	368
O'Neill, Hon. Thomas P., Jr.: "Sharp Shoppers Miss Low Cost 43 Percent of Time," article on Eastern Michigan University study...	24
Peterson, Mrs. Esther:	
Compilation of foreign laws and regulations on packaging and labeling in selected foreign jurisdictions:	
A. Canada.....	93
B. Great Britain.....	10
C. Italy.....	110
D. France.....	112
E. Sweden.....	116
F. Switzerland.....	118
G. German Federal Republic.....	121
H. Soviet Union.....	123
I. Austria.....	125
J. Belgium.....	129
Letter dated August 1, 1966, re Department of Agriculture label review program.....	210
Letter dated September 9, 1966, with table, "What Consumers Think of Packaging," from June 15, 1966, issue of Sales Management.....	168
"Truth in Packaging in an American Supermarket," a study conducted at Eastern Michigan University by Monroe Peter Friedman.....	154
Table 1.—Confusion values and estimated consume expenditures for 20 supermarket products.....	158
Proprietary Association, The:	
Appendix I—Outline of principal Federal controls presently pertaining to packaging and labeling of drugs.....	471
Appendix II—Cases on "Trade Secrets".....	472
Scott Paper Co.: Letter dated August 22, 1966, re cost summary for roll paper towels produced under section 5(d).....	600
Watson, Hon. Albert W.: Recipes illustrating size of servings versus number of servings (table).....	256

—

—

—

## FAIR PACKAGING AND LABELING

---

TUESDAY, JULY 26, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The Committee on Interstate and Foreign Commerce this morning is beginning 2 weeks of hearings on truth in packaging legislation. If the number of bills introduced on this subject and the number of witnesses, including Members of Congress, who have expressed a desire to testify upon this legislation, are an indicator of the importance of this legislation, one would reach the conclusion that this legislation ranks among the most important ever to come before this committee.

Over 40 bills have been introduced in the House, and we have also before us S. 985, which was passed overwhelmingly by the other body.

(The list of bills, and sponsors, as introduced in the House are as follows:)

H.R. 7493, by Mr. Halpern, of New York.  
H.R. 7534, by Mr. Ottinger, of New York.  
H.R. 7600, by Mr. Kastenmeier, of Wisconsin.  
H.R. 7619, by Mr. Dent, of Pennsylvania.  
H.R. 8475, by Mr. McGrath, of New Jersey.  
H.R. 8764, by Mr. Helstoski, of New Jersey.  
H.R. 11982, by Mr. Roybal, of California.  
H.R. 12043, by Mr. Howard, of New Jersey.  
H.R. 12759, by Mr. Farnum, of Michigan.  
H.R. 12977, by Mr. W. D. Ford, of Michigan.  
H.R. 13660, by Mr. Patten, of New Jersey.  
H.R. 13719, by Mr. Schmidhauser, of Iowa.  
H.R. 13779, by Mr. Vivian, of Michigan.  
H.R. 13951, by Mr. Hicks, of Washington.  
H.R. 14158, by Mr. McCarthy, of New York.  
H.R. 14498, by Mr. Vanik, of Ohio.  
H.R. 14633, by Mr. Donohue, of Massachusetts.  
H.R. 15102, by Mr. Love, of Ohio.  
H.R. 15269, by Mr. Stalbaum, of Wisconsin (title I only).  
H.R. 15370, by Mr. Karth, of Minnesota.  
H.R. 15440, by Mr. Staggers, of West Virginia.  
H.R. 15617, by Mr. Olsen, of Montana.  
H.R. 15707, by Mr. Multer, of New York (title I only).  
H.R. 15708, by Mr. O'Neill, of Massachusetts.  
H.R. 15711, by Mr. Pucinski, of Illinois.  
H.R. 15832, by Mr. Bingham, of New York.  
H.R. 15850, by Mr. Rooney, of Pennsylvania.  
H.R. 15856, by Mr. Thompson, of New Jersey.  
H.R. 15924, by Mr. McCarthy, of New York.

H.R. 15949, by Mr. Helstoski, of New Jersey.  
 H.R. 15958, by Mr. Udall, of Arizona.  
 H.R. 16002, by Mr. O'Hara, of Michigan.  
 H.R. 16010, by Mr. Burton, of California.  
 H.R. 16014, by Mr. Moorhead, of Pennsylvania.  
 H.R. 16047, by Mr. W. D. Ford, of Michigan.  
 H.R. 16059, by Mr. Schmidhauser, of Iowa.  
 H.R. 16163, by Mr. Dent, of Pennsylvania.  
 H.R. 16207, by Mr. Conyers, of Michigan.  
 H.R. 16298, by Mr. Ryan, of New York.  
 H.R. 16429, by Mr. Rosenthal, of New York.  
 H.R. 16566, by Mr. Clevenger, of Michigan.

Thus far 10 Members of Congress have notified the Chair of their desire to be heard, and 52 witnesses have notified the committee clerk of their desire to testify. These come from every section of America.

It must be obvious under these circumstances to the members of the committee as well as to the witnesses that the Chair must do his utmost to conserve the time of the committee in these hearings. The Chair is prepared to discharge this responsibility to the best of his ability.

The chairman introduced a bill, H.R. 15440, which is substantially identical with the Senate bill, except that it contains a prohibition against the distribution of any commodity in deceptive packages, which is not contained in S. 985.

At this point in the record there will be included copies of S. 985 and H.R. 15440.

There will further be included copies of the agency reports on these bills.

(The bills S. 985 and H.R. 15440 and reports thereon follow:)

[S. 985, 89th Cong., 2d sess.]

**AN ACT** To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Packaging and Labeling Act".*

#### DECLARATION OF POLICY

Sec. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as the quantity of the contents and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

#### PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

Sec. 3. (a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to the commodity a label, which does not conform to the provision of this Act and of regulations promulgated under the authority of this Act.

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities

except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

#### REQUIREMENTS AND PROHIBITIONS

**SEC. 4. (a)** No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 6 of this Act and which shall provide that:

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label; and

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) if expressed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole units of pounds, pints, or quarts (avoirdupois or liquid, whichever may be appropriate);

(B) shall appear in conspicuous and easily legible type in distinct contrast (by typography, layout, color, embossing, or molding) with other matter in the package;

(C) shall maintain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

#### ADDITIONAL REGULATIONS

**SEC. 5. (a)** The authority to promulgate regulations under this Act is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 4 of this Act is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 2 of this Act.

(c) Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulation effective to—

## FAIR PACKAGING AND LABELING

(1) establish and define standards for characterizing the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) establish and define the net quantity of any commodity (in terms of weight, measure, or count) which shall constitute a serving, if that commodity is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

(3) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; and

(4) require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity, except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal Food, Drug and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.

(d) Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, and fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

(e) At any time within sixty days after the publication of any determination pursuant to subsection (d) (1) as to any consumer commodity, any producer or distributor affected may request the Secretary of Commerce to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, distributor, and consumer representation. Upon the filing of any such request, the Secretary of Commerce shall transmit notice thereof to the authority which has caused notice of such determination to be published.

(f) No regulation promulgated pursuant to subsection (d) (2) with respect to any consumer commodity may—

(1) vary from any voluntary product standard in effect with respect to that consumer commodity which was published—

(A) before the publication of any determination with respect to that consumer commodity pursuant to subsection (d) (1);

(B) within one year after the filing pursuant to this section of a request for the development of a voluntary product standard with respect to that consumer commodity; or

(C) within such period of time (not exceeding eighteen months after the filing of such request) as the promulgating authority may deem proper upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there are presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity

customarily used for the distribution of related commodities of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d) (2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging and the cost to consumers of the commodities affected;

(2) the availability of any commodity in a reasonable range of package sizes to serve consumer convenience;

(3) the materials used for the packaging of the affected commodities;

(4) the weights and measures customarily used in the packaging of the affected commodities;

(5) competition between containers made of different types of packaging material.

#### PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, or the orderly disposal of packages in inventory or with the trade as of the effective date of the regulation.

#### ENFORCEMENT

SEC. 7. (a) Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.

(b) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(c) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

## REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(e) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.

## COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

## DEFINITIONS

SEC. 10. For the purposes of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes for personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesaler or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251-256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257-257i).



(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity;

(d) The term "person" includes any firm, corporation, or association;

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries; and

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

#### SAVING PROVISION

SEC. 11. Nothing contained in this Act shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Hazardous Substances Labeling Act.

#### EFFECT UPON STATE LAW

SEC. 12. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which differs from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

#### EFFECTIVE DATE

SEC. 13. This Act shall take effect on the first day of the sixth month beginning after the date of its enactment: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic), and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

Passed the Senate June 9, 1966.

Attest:

EMERY L. FRAZIER,  
*Secretary.*

[H.R. 15440, 89th Cong., 2d sess.]

A BILL To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Fair Packaging and Labeling Act".

#### DECLARATION OF POLICY

SEC. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

#### PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

SEC. 3. (a) it shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person (other than a common carrier for hire, a contract

carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Act and of regulations promulgated under the authority of this Act.

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

#### REQUIREMENTS AND PROHIBITIONS

SEC. 4. (a) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged or labeled consumer commodity unless in conformity with regulations established by the promulgating authority pursuant to section 6 of this Act which shall provide that:

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label if that consumer commodity is enclosed in a package; and

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) if expressed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole units of pounds, pints, or quarts (avoirdupois or liquid, whichever may be appropriate);

(B) shall appear in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

#### ADDITIONAL REGULATIONS

SEC. 5. (a) The authority to promulgate regulations under this Act is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 4 of this Act is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission

(whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 2 of this Act.

(c) Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterizing the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such product, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity;

(2) establish and define the net quantity of any product (in terms of weight, measure, or count) which shall constitute a serving, if that product is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

(3) regulate the placement upon any package containing any product, or upon any label affixed to such product, of any printed matter stating or representing by implication that such product is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; and

(4) require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended) that information with respect to the ingredients and composition of any consumer commodity (other than information concerning proprietary trade secrets) be placed upon packages containing that commodity; and

(5) prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof (in terms of weight, measure, or count).

(d) Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, or fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

(e) At any time within sixty days after the publication of any determination pursuant to subsection (d) (1) as to any consumer commodity, any producer or distributor affected may request the Secretary of Commerce to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, distributor, and consumer representation. Upon the filing of any such request, the Secretary shall transmit notice thereof to the authority which has caused notice of such determination to be published.

(f) No regulation promulgated pursuant to subsection (d) (2) with respect to any consumer commodity may—

(1) vary from any voluntary product standard in effect with respect to that consumer commodity which was published—

(A) before the publication of any determination with respect to that consumer commodity pursuant to subsection (d) (1);

(B) within one year after the filing pursuant to this section of a request for the establishment of a voluntary product standard with respect to that consumer commodity; or

(C) within such period of time (not exceeding eighteen months after the filing of such request) as the promulgating authority may deem proper

upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there is presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d) (2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging of the products affected;

(2) the availability of any product in a reasonable range of package sizes to serve consumer convenience;

(3) the materials used for the packaging of the affected products;

(4) the weights and measures customarily used in the packaging of the affected products; and

(5) competition between containers made of different types of packaging material.

#### PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act.

#### ENFORCEMENT

SEC. 7. (a) Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.

(b) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(c) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 881).

#### REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(e) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.

#### COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

#### DEFINITIONS

SEC. 10. For the purpose of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat.

upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there is presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d) (2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging of the products affected;

(2) the availability of any product in a reasonable range of package sizes to serve consumer convenience;

(3) the materials used for the packaging of the affected products;

(4) the weights and measures customarily used in the packaging of the affected products; and

(5) competition between containers made of different types of packaging material.

#### PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act.

#### ENFORCEMENT

SEC. 7. (a) Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.

(b) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(c) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

#### REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(e) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.

#### COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

#### DEFINITIONS

SEC. 10. For the purpose of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat.

1186, as amended; 15 U.S.C. 234-236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251-256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257-257i);

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity;

(d) The term "person" includes any firm, corporation, or association;

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries; and

(f) The term "principal display panel or panels" means that part, or those parts, of a label that is, or are most likely to be, displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

#### SAVING PROVISION

Sec. 11. Nothing contained in this Act shall be construed to repeal, invalidate, supersede, or otherwise adversely affect—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Hazardous Substance Labeling Act.

#### EFFECT UPON STATE LAW

Sec. 12. It is hereby declared it is the express intent of Congress to supersede any and all laws of the State or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which differ from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

#### EFFECTIVE DATE

Sec. 13. This Act shall take effect on the first day of the sixth month beginning after the date of its enactment: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic), and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., July 25, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 985, a bill "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

This Department recommends passage of the bill.

With the increasing number and variety of packaged products available, there is an increasing need for adequate information regarding quantity, quality, and prices in order for consumers to make rational choices. This bill would do much to meet that need.

The provisions of this bill are in many respects comparable to the labeling requirements under the Poultry Products Inspection Act. Under the Meat Inspection Act extensive regulations regarding labeling are also in effect. Provision has been made in S. 985 for exemption of meat and poultry products and certain other commodities and containers that are now regulated under Federal laws administered by this Department.



The requirements of this bill with respect to labeling of consumer commodities are extensions of comparable requirements under the Food, Drug, and Cosmetic Act governing the labeling of foods other than meat and poultry products.

This report is also in response to your request for comments on H.R. 15440, a bill "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

---

DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 20, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for our comments upon H.R. 15440 and S. 985, bills to prevent the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities. The bills may be cited as the "Fair Packaging and Labeling Act."

The Department of Labor is on record as favoring legislation to ensure truth in packaging and labeling. The most recent expression of this support is found in testimony by Mrs. Esther Peterson before the Senate Commerce Committee on S. 985. Mrs. Peterson testified on behalf of the Department of Labor and also as Special Assistant to the President for Consumer Affairs.

We note that there are some differences between S. 985 and H.R. 15440, but defer to the administering agencies for specific comment upon these differences.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

W. WILLARD WIRTZ,  
*Secretary of Labor.*

---

OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., August 22, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Department of Justice concerning the bills S. 985 and H.R. 15440 "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

The bills would be cited as the "Fair Packaging and Labeling Act." The legislation would, with certain exceptions, make it unlawful to package or label consumer commodities for distribution in commerce whose labels or packages fail to conform to regulations to be promulgated under the measure. The Secretary of Health, Education, and Welfare would administer the Act in its application to foods, drugs, devices, and cosmetics, and the Federal Trade Commission would administer the Act with respect to other consumer commodities. While the bills differ in certain respects, we defer to the agencies primarily concerned as to the provisions which would best accomplish the desired purpose.

The Department of Justice favors the enactment of this legislation which is designed to implement the recommendations of the President on fair packaging and labeling.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,  
*Deputy Attorney General.*

THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., August 4, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on S. 985, H.R. 15440, and H.R. 15707, bills to regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce.

The bills are designed to prevent unfair and deceptive packaging and labeling of certain consumer commodities. The Secretary of Health, Education, and Welfare, with regard to foods, drugs, and cosmetics, and the Federal Trade Commission, with regard to all other consumer commodities, would be directed to promulgate regulations to insure that certain essential product information is included on the label of a commodity. The administering agencies would also be authorized to promulgate certain regulations on a commodity line basis and to establish reasonable retail weights or quantities in certain cases. S. 985 would implement the recommendations of the President for fair packaging and labeling legislation.

The only provision of the proposed legislation of primary interest to this Department is section 7(c) of S. 985 and H.R. 15440, which would direct the Secretary of the Treasury to enforce the packaging and labeling provisions with regard to imports of commodities. The Department anticipates no unusual enforcement problems under section 7(c) and would have no objection to its enactment.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

FRED B. SMITH,  
*General Counsel.*

---

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., July 26, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your requests for the views of the Bureau of the Budget on S. 985, H.R. 15440, and H.R. 15707, three bills each entitled the "Fair Packaging and Labeling Act." These bills, while differing in some respects, have the common purpose of preventing unfair or deceptive methods of packaging or labeling certain consumer commodities, and thus enabling consumers to obtain accurate information essential to the effective operation of the markets in these commodities.

In his message of March 21, 1966, the President renewed his previous recommendations for equitable and effective legislation on packaging and labeling in order to help assure fair consumer choice based upon reliable information. The Special Assistant to the President for Consumer Affairs and representatives of the agencies principally interested in this legislation, in statements they have presented to your Committee, endorse S. 985 as approved by the Senate.

Enactment of S. 985 would be in accord with the President's program.

Sincerely yours,

WILFRED H. ROMMEL,  
*Assistant Director for Legislative Reference.*

---

GENERAL SERVICES ADMINISTRATION,  
Washington, D.C., July 23, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of June 15, 1966, requested a report by the General Services Administration on S. 985, 89th Congress, an act "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive

methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

The purposes of the act are to insure that the labels of packaged consumer commodities adequately inform consumers of the quantity and composition of their contents and to promote packaging practices which facilitate price comparisons by consumers.

The proposed legislation would affect the responsibilities and functions of the Department of Health, Education, and Welfare and the Federal Trade Commission rather than those of the General Services Administration. However, we are in accord with the purposes of S. 985 and favor its enactment as passed the Senate.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, Jr., *Administrator.*

The CHAIRMAN. This morning it is my intention to hear from Members of Congress first. Following them, we shall hear from the representatives of the several executive departments and agencies which are concerned with this legislation.

I am most happy that the departments and agencies have agreed to testify as a panel in order to conserve the committee's time, and I am hopeful that this constructive effort to conserve time will be emulated by all other witnesses.

All of the Government witnesses will be permitted to complete their testimony before any of them will be available for questioning by the committee members. I would like to make that clear, that we will not question any of the panel until all of them have all completed their testimony.

Without anything further, our first witness this morning will be one of our colleagues in Congress, the Honorable Benjamin S. Rosenthal of New York.

Is the Congressman present?

If he is not present, the Honorable Edward J. Patten, a Member of Congress from New Jersey, will testify.

#### **STATEMENT OF HON. EDWARD J. PATTEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PATTEN. Mr. Chairman, I would like to thank you for the opportunity to be here today. I come here at this time to testify in strong support of the need for action insuring fair packaging and labeling as proposed in legislation introduced by many of my colleagues, besides myself.

The need for protection of the consumer's interests can be ignored no longer by the Federal Government. In areas of public health and pure foods and drugs this interest has not been lacking. This same active interest on our part must now be extended into both the packaging and labeling of products.

The currently proposed legislation, however, is only an initial step toward presenting the consumer with a product that is clearly and distinctly packaged with regard to quality, quantity, and size. The bills we are considering today are only the first step forward in the protection of consumer interests. If armed with such basic information as product sizes, numbers, and weights, the American house-

wife, whose food budget is always of the utmost concern, can then more easily make the best choices for increased economy and savings.

It has been estimated from studies conducted at Eastern Michigan University that about \$4 billion a year are drained from the pockets of Americans. These funds are lost when homemakers are misled by unclear advertising on boxes, or by a lack of information about packages which would help them to purchase more economical goods.

"Family," "Giant," "Super," and "King" are all more product sizes known to housewives. However, the relative sizes and values of each seem not to be. In Michigan tests, when 33 young homemakers made 660 purchases, they failed to buy the most economical purchase in 43 percent of their selections when shopping for the "best buy." Part of this results from a lack of truth in packaging. Clearly, there is a need for action.

As a letter from a homemaker informed me:

I do not see how some things can be printed on packages that are so wrong and be gotten away with, such as serves 3-4 generously. Serves 3-4 what may I ask? Certainly not my two sons and husband.

Another letter inquired:

Why must shoppers always have to look in the oddest places for sizes and weights on packages and boxes. Can't the government do anything to put them up front where they are easily visible.

Other mail that I have received has complained even of failure of products in some cases to list ingredients. One gentleman pointed out that there are certain foodstuffs to which he is allergic and would like to know if they are contained in products he might purchase.

Mr. Chairman, action on this measure should be immediate.

Every day's delay is costing American housewives many valuable food dollars. Effective and enforceable legislation is necessary to dispell the idea that the consumer is helpless to improve his own position as a buyer. The bills before this committee are primarily in response to thousands of American letterwriters.

I am especially interested that such legislation would be of special benefit to lower income families who spend more than one-third of their limited budgets on food. These homemakers are faced with the endless problem of making ends meet. Fair packaging and labeling would make their tasks easier by allowing them to quickly and easily employ economical shopping methods.

I want the chairman to know that I spent 2 years on the Science and Astronautics Committee, which handles legislation dealing with the Bureau of Standards, and we often discussed the question of the decimal system, the question of standards for sizes for baskets, etc., and the effect in foreign trade. I hope this committee does not handcuff industry. I hope they don't unfairly hamper the advertising field.

American know-how and initiative are known all over the world. I hope we still give them a chance to sell. But I do hope, too, we can protect our consumers against what I think are outright frauds in some of the packaging and labeling that I see.

I know your committee will consider all of these factors, and I hope you bring a bill to the floor that will not take the good initiative away from our industry, but which, at the same time, will protect the cus-

tomers from a package that will say "family-size," "the giant," "the super," "the king size," when we know the terms are meaningless.

I always get a kick out of a local bank when I go in and see a sign which says, "Interest on automobile loans, 4 percent." My efforts to have the bank tear the sign down have always failed. I know they are charging 11 percent; they are not getting 4 percent.

It is that kind of wrong impression that I would like to see stopped in packaging. I could give you many more illustrations, but out of consideration for the prominent guests here, I will not explore it any further.

I do know that our press, our public, and the consumers do want some of the things which Mrs. Peterson, her consumers group, and others brought forth as to whether the Federal Government will protect the consumer against fraudulent advertising and fraudulent packaging.

I would again like to thank the committee for giving me this opportunity to reaffirm my strong support for fair packaging and labeling legislation. Thank you, my colleagues, and Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Patten. The committee wishes to thank you for coming over and giving us the benefit of your views. We know your interests, when you have appeared before the committee in the past, you have always been for the general welfare of the Nation and the people.

Certainly this committee will not try to handcuff industry. All we want to do is see that the people get a fair deal.

Mr. Friedel?

Mr. FRIEDEL. I would like to compliment the gentleman on his statement. I know he is one of the hardest-working members we have. I am always glad to hear him testify.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you for the panel.

I am interested in trying to find out wherein this bill treats subjects that are not already embodied in legislation. Will you point out in either the Senate bill or in H.R. 15440 items which are not now covered by existing law?

You mentioned about the advertising. Is there anything here that would give the Federal Trade Commission additional authority that they do not now have? That is, in regard to advertising?

Mr. PATTEN. I think your point is well taken. Certainly the first four chapters of the law are already covered. By our act, however, we could give the FTC some additional powers that would make the implementation more effective.

Mr. YOUNGER. Can you point out in this bill where that would be accomplished?

Mr. PATTEN. I don't have a copy of the bill in front of me.

Now I have received one. Thank you.

I think we are well aware that the great value of our bill is in the enforcement feature, which would be more effective under this bill than under current law.

Mr. Younger, it is true that the first four chapters of this bill are already law.

Mr. YOUNGER. Then it is not necessary to repeat them, in your opinion.

Mr. PATTEN. If you are going to talk about chapter 5, it will take us a good deal of time. I have some reservations about certain sections of chapter 5.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Are there any further questions?

If not, thank you very much.

Mr. PATTEN. I thank the chairman.

The CHAIRMAN. At this time we will hear our colleague from Ohio, Hon. Charles Vanik, author of a similar bill, H.R. 14498.

### **STATEMENT OF HON. CHARLES A. VANIK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. VANIK. Mr. Chairman, I appreciate very much this opportunity to appear in behalf of legislation which your committee is currently considering on truth in packaging.

I have introduced a bill substantially like the legislation currently being considered by your committee.

As a Member of Congress, I have considered it my duty to carefully study consumer prices, packaging, and the quality standards of merchandise.

The case for uniform packaging has been substantially established. It seems to me that this requirement would impose no extraordinary burden on the producer of merchandise, at least no burden he should not be expected to assume. There is a place in our competitive system for fair and decent competition in merchandising. There is no place for merchandising deceit and fraud, such as results from the variables in packaging and misleading statements as to content and weight. There is room for artistry in packaging without fraud.

While I support the legislation which is before the committee, I would like to direct the committee's attention to those areas not covered by this legislation.

First of all, it seems to me that the name of the manufacturer should be required to be printed on the label of every product that is produced. Today there are vast quantities of items which are not identifiable, as to the manufacturer. The use of brand names of unmarked quality or origin should not be countenanced.

Another critical area not covered by this proposed legislation relates to the packaging of fresh meats and poultry. Recently, I have been distressed by the skyrocketing prices and the concurrent deterioration in the quality of bacon. I was shocked to discover that there is no minimum standard provided to determine what constitutes bacon and what constitutes compressed fat and water. The only standards which exist apply to Government procurement which provides that the fat content in bacon shall not exceed 68 percent, the sale content shall not exceed 21½ percent, while the moisture content 24.2 percent. Thus, Federal purchase standards provide for no less than 5.3 percent lean meat in bacon. The average consumer is generally provided with bacon far below these Federal purchase standards. At the current prices for bacon, the consumer is paying \$14 to \$16 per pound for the lean meat values in bacon—America's most expensive food.

It therefore seems to me that legislation on packaging should also cover this vital area of meat marketing. The processor should be

required to indicate on the package the fat and water content of meat and most certainly the pure meat content. The same packaging and labeling requirements should be required in all other meats where the fat and water contents vary significantly.

It is my hope, Mr. Chairman, that the legislation which your committee considers today is the beginning of truth in packaging, labeling, and quality statements on food and other items purchased by the consumer. Our efforts should be directed toward giving the consumer a decent break at the marketplace. This should not disturb truly competitive forces in our economy, which should begin to compete on the basis of truth in quantity and truth in standards of quality.

The CHAIRMAN. Thank you Mr. Vanik. If there are no questions we shall proceed by hearing next our colleague from New York, the Honorable Leonard Farbstein.

#### STATEMENT OF HON. LEONARD FARBSTEIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. FARBSTEIN. Mr. Chairman, on January 4 of last year, I introduced into the House of Representatives a truth-in-packaging bill, H.R. 993.

Extensive hearings on packaging and labeling, with particular reference to foods and household supplies, have revealed gross abuses of good business practices. I believe that consumer protection legislation is urgently needed for the following three major reasons.

First of all, the consumer is the pivot of our modern capitalistic system. As that great apostle of free competitive capitalism, Adam Smith said, "consumption is the sole end and purpose of all production."

Informed demand by consumers is theoretically, at least, the force that directs production into appropriate channels.

But how can Mrs. Consumer make rational choices among various commodities in the marketplace, faced, as she is, by a maze of many different sizes and shapes of packages, cans, and bottles?

Author and critic, Marya Mannes, declares that housewives need to take "a computer, a slide rule, and an MIT graduate to market, to figure out what we're buying."

And as Sarah Newman, general secretary of the National Consumers League, relates, pointing to two bottles of all-purpose cleaners—

They certainly look the same, but this one contains 1 quart, while the other, marked "giant size" contains only 1 pint, 12 ounces—12 percent less. . . ."

Furthermore, one labor official complained that "it is very difficult to make choices based on quality, quantity, and price, or even sometimes to know just what is being bought. Competition appears to be based less and less on price, quantity, and quality, and more and more on the sales pitch carried by packages, shapes, and sizes and by printed messages designed to persuade rather than to inform."

Second, pilfering of pounds by slick packaging techniques is downright dishonest. "Fraud and cheating are common practices in our prepackaged foods," charges Arch W. Troelstrup, chairman of the Consumer Education Department of Stephens College. These unethical practices by businessmen mount up to big money. Some sources claim that the American consumer is cheated to the tune of almost \$20 million in grain products alone by such packaging methods.

Not only are consumers swindled, but in addition, the ethical businessman is penalized by such unfair marketing tactics. How can the honest dealer compete against trickery?

Third, the Johnson administration, supported by many of our lawmakers, is intensely concerned with poverty-poor segments of our society—those elements which have been bypassed by the general affluence in America.

To quote from the esteemed Senator Hart, leader of the campaign in the Senate for consumer protection, "truth-in-packaging legislation would save an average family about \$250 a year." Mind you, this is equivalent to more than a 10-cent-an-hour raise for the average worker.

Let me now enumerate briefly the following six most frequent abuses in the field of packaging and labeling.

1. The widespread lack of uniformity in the location of the information, such as the quantity statement, that is required by law to appear on the packages.

2. The lack of reasonable and efficient standardization of package sizes.

3. The use of such misleading qualifying terms as "jumbo," "giant," "full," and other.

4. The smallness of type and the lack of contrast in colors.

5. The use of packages and containers in designs that make the package appear to be larger than its actual contents justify.

6. The practice of marking a package "cents off" when all too frequently such offers represent no actual price reductions.

My bill would correct these abuses by adding a new section to the Clayton Antitrust Act prohibiting unfair and deceptive packaging and labeling on certain consumable commodities. The measure would—

Require that net weight or net content statements or both be stated on the front panel of packages and labels.

Establish minimum standards regarding the location and prominence of net weight or contents statements.

Establish minimum standards regarding type size and face in which weight or content statements are printed.

Prohibit qualifying words or phrases regarding net weight or content.

Prohibit the printing upon packages by the packager or distributor of information implying that the product is offered for sale at a price below the customary retail price or that a price advantage is being accorded to the purchaser because of the size or quantity of the package. This section would not apply to the ultimate retailer.

Prohibit the use of deceptive pictures or illustrations on packages or labels.

My bill would also grant authority to the Food and Drug Administration to establish industrywide regulations to achieve the measure's objectives where food, drugs, and cosmetics are concerned; the Federal Trade Commission would have jurisdiction in other areas.

Such regulations would:

Establish reasonable weights or quantities in which a commodity can be sold.



Prevent the sale of a commodity in a package whose size, shape, or proportions may deceive purchasers as to the weight or the quantity of the product within the package.

Establish standards of size terminology such as "small," "medium," or "large."

Establish serving standards.

Establish standards to designate the quantitative contents of a package where net weight or number is not meaningful.

Require that sufficient information about the ingredients or composition be displayed prominently on the package or label, with the exception of trade secrets.

Those who oppose truth-in-packaging legislation argue that only more vigorous administration of present laws is necessary. I disagree. It is true that several Federal agencies, such as the Federal Trade Commission, the Food and Drug Administration, the U.S. Department of Agriculture, the Bureau of Weights and Measures, and others, do have jurisdiction over consumer goods which are shipped in interstate commerce but they have limited and fragmented authority.

Now ladies and gentlemen, President Johnson envisages the Great Society, in which the ravages of poverty will be wiped out. Many of us here in the Congress earnestly share with him his hopes and plans for realization of this boldly conceived new order.

But let me ask you two questions. Shouldn't the American consumer, therefore, assume a role of prime importance in a chart for the Great Society? Shouldn't a consumer protection measure rate a high priority on the list of must legislation designed to implement this brave new world?

I say "Yes." The responsibility I bear to my district could dictate no other answer. In my district there are many people whose economic plight has been a focus for the antipoverty program. Surely they are least able to afford deceptive packaging. Moreover, there are many who receive various forms of relief—they can least afford to be misled by confusing labels.

I say that to protect the consumer against confusion and abuses in packaging and labeling, to protect the honest businessman against unfair marketing techniques and to place much-needed funds in the pockets of the average consumer, we must delay no longer in passing a truth-in-packaging law. Therefore, I urge immediate approval of my bill, H.R. 993, by this committee.

The CHAIRMAN. Thank you for your views, Mr. Farbstein.

Mr. FARBSTEIN. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. If there are no questions we shall hear next the testimony of our colleague from Massachusetts, the Honorable Thomas O'Neill. You may proceed Mr. O'Neill.

#### **STATEMENT OF HON. THOMAS P. O'NEILL, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS**

Mr. O'NEILL. Mr. Chairman, it is an honor and a privilege to testify before this committee in behalf of legislation I consider long awaited and long overdue. I speak in favor of H.R. 15708, companion bills, and other legislation of this nature.

These proposed measures are known as Fair Packaging and Labeling Acts and popularly called truth in packaging. The names are important. The legislation being considered today would protect the consumer against unfair practices in packaging and labeling. It would end misleading and deceptive methods currently being used in the packaging and labeling of consumer products. The fair packaging and labeling legislation pending before this committee would require manufacturers to put accurate and visible information on packages describing the nature and quantity of their contents. It would also prevent the use of words to describe amounts, if those words were misleading or false.

The legislation does not introduce nor require any unnecessary or extraneous regulations on free enterprise; it only insures that fair practices will prevail.

This fair packaging legislation was spurred by thousands of letters from thousands of housewives all over the country who complained about packaging and labeling practices. These housewives complained because they were unable to be proficient comparison shoppers. They wrote that they could not make correct price comparisons because the information about contents of packages was not complete nor clear.

The confusion created by many of these "accepted" business practices make good comparisons impossible. There are over 8,000 items in the average supermarket today. The average shopper makes hundreds of decisions every time she goes shopping for her family. She cannot make the best decisions if she is deceived by the information presented on the package.

There are several practices which make it impossible for a shopper to choose the least expensive items. The number of items of course makes it difficult, but that in itself would not preclude correct decisions. One of the biggest obstacles to comparison shopping is the unreasonable weights and measures used in packaging products.

Products formerly packaged in even pounds or ounces are now packaged in odd sizes such as 14¼ ounces, at the same price as was previously charged for a full pound. This sleight of hand would be successful with all but the most suspicious shopper, and what busy housewife has the time to carry around lists of weights and measures so that she can tell when a product has been changed from one day to the next?

The use of qualifying words in the description of contents is also misleading. Calling a quart of soda a "large quart" implies that there is more soda than in an ordinary quart; this is not so. A quart is a quart no matter how it is described. This bill would end such practices.

This legislation would also require front-panel content labeling so that the contents could be readily identified as to quantity and ingredients. This would put an end to content labeling that complies with the letter and not the spirit of the law. There would be no more labeling on hidden or obscured parts of a package.

Another common practice that would be eliminated by this legislation is the deceptive use of the word "servings." There have been many cases of a package guaranteeing six or eight servings, that when cooked or baked only provided three or four servings of a reasonable amount. If the housewife can't trust the information on the package

how can she judge how much of a product she should buy? There is no other recourse except trying every product and then judging.

Much of the confusion created by these common practices may be unintentional and the practices themselves may be thoughtless rather than contrived to trick the buyer. But when does confusion created by what are now "accepted" business practices become deceit? There are too many common practices that cannot be justified by the phrase, "It's just business as usual." There are too many practices which appear to be deliberate attempts to mislead and trick the consumer.

One of these is the well-known "cents off" approach. The manufacturer produces an item already marked so many cents off. However, he has no control over the price of the article which is determined by the retailer. Quite often the price is the exact same as without the cents-off deal, yet the buyer is tricked by outright deceptive practices.

Another method is to package an "economy size" container. This package may have twice the amount of a smaller package but costs more than twice as much; or the "economy" package costs less than two smaller packages, but it also has less content than two smaller packages. All of these "bargains" appear to save the buyer money, but none of them do.

One of the worst abuses of the free marketing system has been in false claims of content or ingredients. We are all familiar with canned fruit or vegetables that are half liquid and half fruit. Equally misleading are pictures or words on a package which imply that ingredients are contained in the package which are not.

We are all familiar with these practices, but perhaps we are not conscious enough of the implications of such practices.

There comes a point when almost every good thing, in excess, becomes bad. Too much ice cream makes a little boy sick; too much sun brings a not too comfortable sunburn. Perhaps we have been allowing manufacturers too much freedom in their packaging and labeling practices. When this freedom works to the detriment of the country as a whole—and that is exactly what it does—then it must be curbed, like a little boy's intake of ice cream.

I say it harms the country as a whole for a very definite reason. When anything hurts the American family it hurts the society as a whole. This is not a dramatic overstatement of the problem. Every housewife is at the mercy of the integrity of the manufacturer. She depends upon him to fairly and truthfully inform her about the contents of his packaged product. Without trying each of 8,000 products found in the average supermarket, the housewife has no other alternative except the package itself. If she could know that every statement on the package were true, that the statements on the package did not imply contents or savings that weren't really there, there would be no need for this bill. But the housewife can't be sure.

Opponents of this bill have tried to interpret it as a slight against the American housewife. This is not a very neat bit of subtlety. The American housewife is the smartest shopper in the world. She can rarely if ever, be fooled. Yet packaging and labeling practices across the country have often made it impossible for the intelligent shopper to find the best buy unless she carries around a magnifying glass, a note pad, and a slide rule.

As an example of the tremendous obstacles in the path of comparison shoppers, I would like to insert at this point in the record an article entitled "Sharp Shoppers Miss Low Cost 43 Percent of Time." (See exhibit A.)

This article describes an experiment conducted by Monroe Friedman, professor of psychology at Eastern Michigan University, with the aid of the American Association of University Women. Professor Friedman directed 33 young, university-graduate homemakers to make the least expensive purchase of 20 supermarket items. They took three times the amount of time the average shopper takes in making her purchases. These intelligent, skillful, economy-minded young women had to make 660 decisions in the course of buying 20 ordinary household products. Of these decisions, 43 percent were wrong. Of 660 items, over 280 were purchased at more than the lowest price. Because of odd-size packages and misleading labeling, it was impossible to choose correctly.

The proposed legislation would end practices that make efficient comparison shopping impossible. This would aid the consumer definitely, but it would also aid the honest businessman who is caught in the competitive merry-go-round of "accepted" business practices. It would establish basic ethical principles for business. The mandatory and discretionary provisions would end the penalization of the honest businessman who has to compete against manufacturers who do not share his sense of ethics. It is now impossible to compete fairly against firms that package their products in shapes or sizes that exaggerate the size of the product or have false claims printed on the package.

The end of misleading and deceptive packaging and labeling would perpetuate rather than diminish fair and free enterprise. The legal uncertainty which allows unfair practice to prevail would be ended by this legislation; it is important that we pass it.

#### EXHIBIT A

##### SHARP SHOPPERS MISS LOW COST 43% OF TIME

**SAN FRANCISCO (C&S).**—Thirty-three young Michigan homemakers tried recently to select the lowest-priced package of 20 supermarket products—and failed 43% of the time.

As a result of this confusion, they spent 9% more than if they'd been able to select the lowest-cost package. Their mistakes on these 20 items alone would cost them \$11 a year—\$11 they could have spent on other goods and services for their families.

These mistakes are mainly the result of packaging practices that tend to confuse consumers rather than help them choose wisely.

These are the main conclusions of a study Esther Peterson, special assistant to President Johnson, referred to December 10 in speaking here to the AFL-CIO Auxiliary.

Monroe Friedman, professor of psychology at Eastern Michigan University, asked the American Association of University Women volunteers to help him answer the question: "Within a reasonable time and without computing devices, can consumers select the package that offers the most for the money?"

Friedman recognized that price per-pound or per-pint isn't the only factor influencing each consumer's decision. It is, however, basic. Even if a consumer prefers Detergent A to Detergent Z, she still must be able to tell what her preference costs her.

She may find the smaller package easier to store on the cupboard shelf, but she must be able to tell what this convenience costs.

Friedman directed each of the 33 women to buy the same 20 products. These ranged from canned peaches to toothpaste. Except for meat, fresh fruits and

vegetables, dairy products, and bakery goods, these 20 products represent the whole range of packaged goods sold in supermarkets.

To select each of the 20 products, a shopper had one to four minutes, depending on the number of packages in that product category. She took 2.35 minutes, on the average—three times as much as the average shopper spends in reaching her decisions.

Because of their "considerable education" and their "strong interest in economy," Friedman said, they performed much better than the average shopper. Yet 43% of their 660 decisions were wrong!

None of them were able to choose the lowest-cost detergent. Only one chose the lowest-cost liquid bleach. Only three picked the best buy in paper towels. Only six figured which was the least expensive cola.

On the other hand, none of the 33 made a mistake in choosing granulated sugar or solid vegetable shortening. Sugar is sold in 1-, 5-, and 10-pound packages, and shortening comes in standard 1- and 3-pound cans.

Friedman noted two particular sources of confusion. In choosing paper towels, shoppers found sizes ranging from 7½ x 11- to 11 x 11-inches. Rolls varied from 75 to 200 towels, and they were packaged one or two to the package.

A second source was liquid bleach. For years manufacturers have made a standard product. Under any brand, bleach has been a 5¼% concentrative of sodium hypochlorite, dissolved in water. Just before Friedman undertook his study, however, one nationally advertised brand dropped its concentration to 3¼%—without cutting the price—and announced the change in tiny print on the back label.

Because these and other packaging practices thwarted the shoppers in their pursuit of "the most for the money," they paid 9% more for these 20 products than if they'd been able to select the least expensive package in each category.

From various studies of U.S. spending patterns, Friedman figured the average family spends \$121 a year for these 20 products. That's a loss of \$11 a year.

Over-all, how much does this packaging confusion cost the typical U.S. family? Friedman doesn't say. However, the average family spends \$1,500 a year in supermarkets, and 60% of this is spent for packaged products similar to the 20 items covered in Friedman's survey.

This puts the price of confusion at \$81 per family per year—or a \$4¼-billion drain on living costs every year. And that assumes all shoppers are as skilled and zealous in pursuit of the least expensive package as these 33 young university graduates.—DWA

The CHAIRMAN. Thank you for your testimony Mr. O'Neill.

Mr. O'NEILL. Thank you for the opportunity Mr. Chairman.

The CHAIRMAN. The next witness is our colleague from Iowa, the Honorable John Schmidhauser. Mr. Schmidhauser, we will be glad to hear you at this time.

#### STATEMENT OF HON. JOHN R. SCHMIDHAUSER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. SCHMIDHAUSER. Mr. Chairman, I have come before this committee to present my views concerning the problem of unfair or deceptive methods of packaging or labeling consumer commodities. The legislation under consideration today, H.R. 16059, I have introduced in an effort to cope with this problem. Not only will my bill more effectively curb deceptive labeling practices, but it will also help consumers stretch their dollars and thereby increase the total purchasing power of our entire economy.

Need for this legislation has been clearly demonstrated by studies which have shown that consumers have great difficulties in coping with modern packaging devices. When one recalls that food purchases account for approximately 25 percent of total consumer expenditures, the significance of these labeling techniques becomes obvious. This

problem is, of course, far more important to low-income families, for they spend a proportionately higher amount of their total income on food purchases than do more affluent families. Mr. Chairman, I would like to take this opportunity to say that as the father of six children, I am only too well aware of the bewildering maze of different sizes and weights of consumer products both my wife and I face now on the market. This problem of fair packaging techniques has been thoroughly investigated by numerous reputable groups. In a recent study conducted by Eastern Michigan University, 33 young married women were instructed to select the most economical package for each of 20 products on sale at a selected supermarket. Time limits set for this experiment corresponded to the amount of time that an average housewife spends shopping. According to the analysis of the results of this study, these shoppers made mistakes in 43 percent of the cases. This represents, Mr. Chairman, a loss of 9 cents on every dollar spent. The study stressed that these results could not be attributed to any other factor than the differences in packages. It also noted that the shoppers selected not only had a strong interest in making the most economical purchases, but being college graduates, they could have been expected to make intelligent decisions. Furthermore, the analysis stated that other shoppers generally, and less educated individuals, in particular, would not perform as well as they did. It is this consumer, the less educated one, the indiscriminate one, as well as the informed buyer, Mr. Chairman, that H.R. 16059 is designed to protect.

H.R. 16059, briefly, would first require that "packages and labels should enable consumers to obtain accurate information as to the quantity of the contents and facilitate price comparisons." It would, secondly, prohibit unfair and deceptive packaging and labeling. Thirdly, authority to promulgate this legislation would be vested in the Secretary of Health, Education, and Welfare with respect to any consumer commodity which is a food, drug device, or cosmetic and the Federal Trade Commission with respect to any other consumer commodity. Fourthly, and last, this act will provide for a uniform national policy for it would supersede any and all laws of the State or political subdivisions thereof insofar as they differ from the requirements of section 4 of the act.

It is my firm belief that approval of a consumer's "bill of rights," the right to safety, the right to be informed, and the right to choose, should be one of the major tasks of the 89th Congress.

The CHAIRMAN. Are there any questions? If not, we thank you for your testimony, Mr. Schmidhauser.

Mr. SCHMIDHAUSER. Thank you, Mr. Chairman.

The CHAIRMAN. We have several other Members to hear so our next witness will be the Honorable Henry Helstoski, sponsor of H.R. 15949.

#### **STATEMENT OF HON. HENRY HELSTOSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. HELSTOSKI. Mr. Chairman, and distinguished members of the committee, thank you for the privilege and opportunity to make my statement on behalf of my bill, H.R. 15949, legislation to regulate interstate and foreign commerce by preventing the use of unfair or

deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce.

In taking action on this proposed legislation we are following the President's recommendation, when in his state of the Union message he said:

We must also act to prevent the deception of the American consumer, requiring all packages to state clearly and truthfully their contents.

The matter of truth in the packaging, labeling, and pricing of products in the American market has been the subject of controversy in recent years. And, much of the current attention comes from the fact that many bills have been introduced on this subject, expression on this subject through numerous newspaper articles and in popular magazine pieces read by the American housewife.

The truth in packaging legislation can be based upon three basic assumptions which can be listed as follows:

1. That a state of consumer confusion exists in this Nation with regard to the true contents and prices of many common retail products.

2. This confusion has resulted from improper packaging and labeling practices by American manufacturers and packagers of consumer products.

3. The remedy for these improper practices is a change in the Federal law by which greater authority would be given to proper Federal authorities in the regulation of packaging and labeling practices.

Present packaging practices which cause the greatest confusion in the supermarkets of today can be itemized in the following.

Poorly presented information concerning both the nature of the contents and the quantity of the contents. These deficiencies in display may take on many forms; for example, too small print, a weak contrast between the printed information and the background print, and failure to present information in a prominent location on the package.

There is much misleading information concerning both the nature of the contents and the quantity of contents. A typical example of the latter practice is "the giant half quart" instead of simply saying "full pint."

Concerning prices, there is much misleading information in the often cited "cents off" specials. Many consumer groups claim that the supermarket managers do not acknowledge these "specials" in their pricing policies.

Unnatural numbers to indicate quantity are also a factor in the packaging field. The use of fractional or mixed numbers instead of whole numbers tend to confuse the American consumer and complicate any effort to determine the truth in the "price per ounce or unit" structure of merchandising of packaged goods.

Mr. Chairman, this committee is gathered here today to protect the consumers from false advertising and other deceptive practices which would victimize them in the marketplace. Because the consumer's voice is sometimes weak and inarticulate, we must be particularly attentive to their problems.

I might say that complaints of unfair packaging come not only from the consumers, they come also from businessmen who would prefer to

operate on a higher level of ethics than the level to which they are being forced by local competition.

The terms "unfair" and "deceptive" encompass all lines of business, and all types of practices which may be detrimental to competition or injurious to consumers. This language includes, but is not limited to, practices such as "bait" advertising, fictitious pricing, oral misrepresentation by house-to-house salesmen, misbranding, sale of reconditioned products as new, false claims as to quality or performance of products, agreements among competitors to fix prices to eliminate a competitor.

Mr. Chairman, some people would have us believe that the truth-in-packaging bill before this committee today is not of great interest to the American consumer. To me this argument strikes me as inadequate, spurious, and not having any validity.

I cannot accept the argument that the housewife or shopper, who would be most directly affected by this legislation, does not want or need this bill. The housewife and frequent shopper has for too long been forced to accept the confusion of package sizes, serving portions, jumbo and superjumbo designations. This need not and should not be the case.

The bills before this committee will enable the consumer to make a valid decision in buying many commodities, without the necessity of being mental giants in mathematics to determine solid values.

The intent of the manufacturers is not the issue at hand this morning. The problem is the confusion which results from current packaging practices. Since the inception of this type of legislation in the Congress, some years ago, manufacturers have made some changes in their packaging practices, but they have not gone far enough. The legislation at hand will establish a basic procedure for packaging and labeling.

Mr. Chairman, I believe that my bill, H.R. 15949, is a good bill, a sound bill, a workable bill and one which will solve a problem in a responsible way and sensible fashion. I think that, as responsible legislators, it is our duty to look at the contents of the legislative packages presented to us and exercise our judgement with respect to the merits of the contents, and not by avoiding responsibility by concerning ourselves with what the bills may be called by label. The contents of this bill are desirable and appropriate. And, the truth-in-packaging label is in the interest of the American consumer.

Mr. Chairman, and gentlemen of the committee, I thank you for the opportunity in presenting my story in support of the legislation your committee has before it today.

The CHAIRMAN. Thank you, Mr. Helstoski. Are there any questions? If not, we shall hear next from Congressman McGrath of New Jersey.

#### **STATEMENT OF HON. THOMAS C. McGRATH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. McGRATH. Mr. Chairman, in April 1965 I polled the Second District of New Jersey, which I have the honor to represent, and one of the questions I asked was: "Do you favor truth-in-packaging legislation requiring use of standard weights and measures in merchan-



dising?" Among 7,000 replies I received to this questionnaire, 97 percent of my constituents favored such legislation.

As a result of this mandate, I introduced H.R. 8475, which is one of the bills this hearing is concerned with, and I wish to speak on its behalf.

In addition to the overwhelming vote in favor of which "truth-in-packaging" legislation among those of New Jersey's Second District on my poll, I found that many of those who replied penned notations in regard to this important matter. For instance, one woman asked, "When a package says '7 cents off!' I want to know what it's off of." Another asked if legislation can correct a situation where cans of peaches, for instance, achieve the weight listed on the can's label by the addition of peach juice instead of portions of peaches. There were other similar questions and statements, all indicating the importance of such legislation to the consumer. Consumer, of course, is a synonym for citizen, since nearly every American is a consumer.

When a similar bill—S. 985—was introduced in the Senate, hearings were held during which I noted some of the statements made by opponents of this legislation. Most of these were in the area of consumer responsibility. It was testified that present regulations are sufficient—this despite the fact that thousands of letters have been and are still being received by Members of both Houses detailing personal experiences with insufficient packaging and labeling regulations. If the present laws were adequate, Mr. Chairman, the practices which the bills on which this hearing is being conducted would not persist.

I have studied some of the deceptive devices which present regulations permit. Illustrations on packages and labels are a case in point. The contents of a package containing cherry pie, for instance, depicts the contents in brilliant clarity and crammed full of cherries. However, removal of the gay wrapper discloses a thin serving with perhaps a third the number of cherries shown on the wrapper. Consumers write to me and to other Congressmen that they find abuses in the size and shape of packages which suggest more content than actually is inside. Here are some other abuses I noted:

Misleading the consumer with complicated and even false claims regarding the nutritive value of vitamins, minerals, and even calorie content.

Using misleading terms such as "tall," "giant," "king size," "economy size," "extra large," "super," and other similar labeling.

Using language the consumer cannot be expected to understand; words like "nordihydroguaiaretic acid," "butylated hydroxytoluene," and other chemical names for food additives and preservatives.

And here are a few specific complaints received by investigators during a survey held in Michigan:

A roll-on deodorant in a box twice the size required for the product, which was labeled, "Giant 1½ fluid oz."

Canned pork and beans, very heavy on the beans and equally light on the pork, with a label which gave reason to expect a generous helping of meat.

Hand or bath soaps, labeled "bath size," with many variations of size and no indication of weight.

Two hair spray preparations each containing 15 ounces; one marked "Giant \$2 value reduced to 98¢" and the other marked "Special \$1.09."

Chocolate peppermint cookies with the contents revealing artificial flavoring and failing to mention peppermint.

Pineapple-filled oatmeal cookies without filling and without pineapple.

Strawberry gelatin dessert without strawberries, although containing artificial flavoring and bits of other fruits.

The "fast count" is another gimmick consumers are confronted with, according to mine and other Congressmen's mail. A new modern package of paper napkins may contain 80 napkins instead of the 100 in the old box of the same size. Air makes up the difference in many cases. The new count is marked in small type somewhere out of sight, but few customers bother to look and those who do rarely remember how many napkins were offered at the old price in the old container.

The practice of "packaging air" was discussed in a recent congressional hearing. It was testified that it costs money to box air—to put the box containing air in a larger box for shipment and move the shipments of boxed air around the country. Boxed air is anything but free.

Mr. Chairman, experts in this field have estimated that the American consumer spends 11 cents more out of each shopping dollar than he needs to, and this is due to cheating and misleading practices which I hope a "truth-in-packaging" bill will bring to an abrupt end.

In the Senate committee hearings, officials of the National Consumers League, the National Federation of Independent Businessmen, and the Federation of Homemakers urged prompt passage of a "truth-in-packaging" bill.

Yet, in the same hearings, representatives of the National Association of Manufacturers and the U.S. Chamber of Commerce contended that the proposed measure would stifle competition and that purchasers are content with the status quo. They even showed public opinion polls to "prove" that the buyer is well pleased with present packaging and labeling methods and thinks they have added a lot to the joys and pleasures of living.

They reported that 84 percent of consumers are satisfied with food product pictures on the labels, that 83 percent are satisfied with the information the packages and labels furnish, that 83 percent are satisfied with the shapes of packages, and that 74 percent are even satisfied with the fullness of the packages.

How different this poll is from my own poll which indicated that, for whatever reasons, 97 percent of those whom I heard from favored an improved "truth-in-packaging" law.

Mr. Chairman, on behalf of my constituents and as a consumer myself, I urge favorable consideration of H.R. 8475 and the other bills with similar intent and hope your committee will report a "truth-in-packaging" bill to the House so that the consumers of our Nation may have much-needed additional protection against nefarious practices which are rampant today.

The CHAIRMAN. Thank you for your views Mr. McGrath. Has Mr. Rosenthal arrived?

If not, we will proceed with our panel: Hon. John T. Connor, Secretary of the Department of Commerce; Hon. Paul Rand Dixon,

Chairman, Federal Trade Commission; Hon. Wilbur J. Cohen, Under Secretary, Department of Health, Education, and Welfare; and Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs.

**STATEMENTS BY A PANEL CONSISTING OF HON. JOHN T. CONNOR, SECRETARY OF COMMERCE; HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN, UNDER SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; AND MRS. ESTHER PETERSON, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS**

The CHAIRMAN. We are happy to have this distinguished panel before us to give us the benefit of your views. You might be involved in some intensive questioning. I will warn you of that now.

I understand, Secretary Connor, that you have an engagement and you have to leave at 12 o'clock.

I want to let the committee know this so that you can depart, but return for questioning at a later time.

Secretary CONNOR. That is correct, Mr. Chairman.

The CHAIRMAN. You are the leadoff witness, I understand.

Secretary CONNOR. Yes, Mr. Chairman. We thought I might start the testimony and then Mr. Dixon on behalf of the Federal Trade Commission, Mr. Cohen for the Department of Health, Education, and Welfare, and then Mrs. Peterson, who will give more detailed testimony concerning some of the consumer problems that are involved in the administration proposal.

We appreciate the willingness of the committee to wait until all four have spoken before answering questions, because our testimony intertwines. I think you will find that some of the questions that you might have, say, after my testimony will be covered by the testimony of some of the other witnesses.

We appreciate that very much, Mr. Chairman.

The CHAIRMAN. You may proceed.

Secretary CONNOR. Mr. Chairman and members of the committee: I appreciate this opportunity to appear before your committee to express my views on H.R. 15440 and S. 985. Both of these very similar measures are intended to enable the public to obtain more complete and meaningful information from the labels and packages of consumer commodities.

This legislation would also promote sound packaging practices, assisting the consumer in making price and content comparisons and benefiting the overwhelming majority of producers of consumer commodities who already treat the public fairly in their labeling and packaging practices.

The Department of Commerce strongly recommends the passage of S. 985 in the form in which it passed the Senate. This bill is in line with the goals set forth by President Johnson in his message to Congress on consumer legislation in March in which he urged Congress to enact fair packaging and labeling legislation.

S. 985 is important to all Americans as consumers. When the American housewife goes to the marketplace, she should be able to

quickly and easily determine the measure or amount in the container and to compare its price with the prices of competitive products.

This bill, which is intended to aid the consumer, should also work to the advantage of the manufacturer. Without question, most businessmen employ high standards. They should be able to count on their competitors also adhering to high standards. There is a common interest between Americans as producers and Americans as consumers.

S. 985 would require regulations to insure that labels of packaged consumer commodities bear adequate information as to contents of the packages. This information would include identity of the commodity and its manufacturer, and a statement of net quantity of contents expressed in ounces or fractions there, or in whole units of pounds, pints, or quarts.

This net quantity statement would be required to be printed in a prominent and uniform manner as to type size and location on the label, and could not be qualified by descriptive words or phrases. However, nondeceptive descriptions would be permitted elsewhere on the label. The bill also provides for exceptions to the mandatory regulations to cover those situations where compliance either is impracticable or unnecessary for consumer protection.

In addition to the mandatory regulations, which apply to all consumer commodities, S. 985 also provides discretionary authority for regulations on a commodity-by-commodity basis.

These regulations would be promulgated when necessary to prevent deception or to facilitate price comparison. They would concern statements of ingredients, cents-off sales, standards defining size descriptions relating to quantity such as "small," "medium," or "large," and serving standards.

Fears have been expressed that the promulgating agencies could be unreasonable in exercising discretionary authority. This is, of course, an argument that could logically be made about every bill. But it should be noted that these regulations cannot arbitrarily be imposed. They must be based on public hearings, and opportunity for judicial review also is provided in the bill.

As I stated in my testimony last year before the Senate Commerce Committee, the Department of Commerce is hopeful that appropriate use would be made of its voluntary product standards program. This has been accomplished under section 5(d) of S. 985. If a voluntary standard on weights and quantities is published within the time prescribed in these bills, any regulations which are promulgated by the enforcing agencies, FTC and FDA, could not vary from the existing standard. Indeed, if there is compliance with the voluntary standard, there may be no need for regulation. In a very real sense, this is a form of self-regulation.

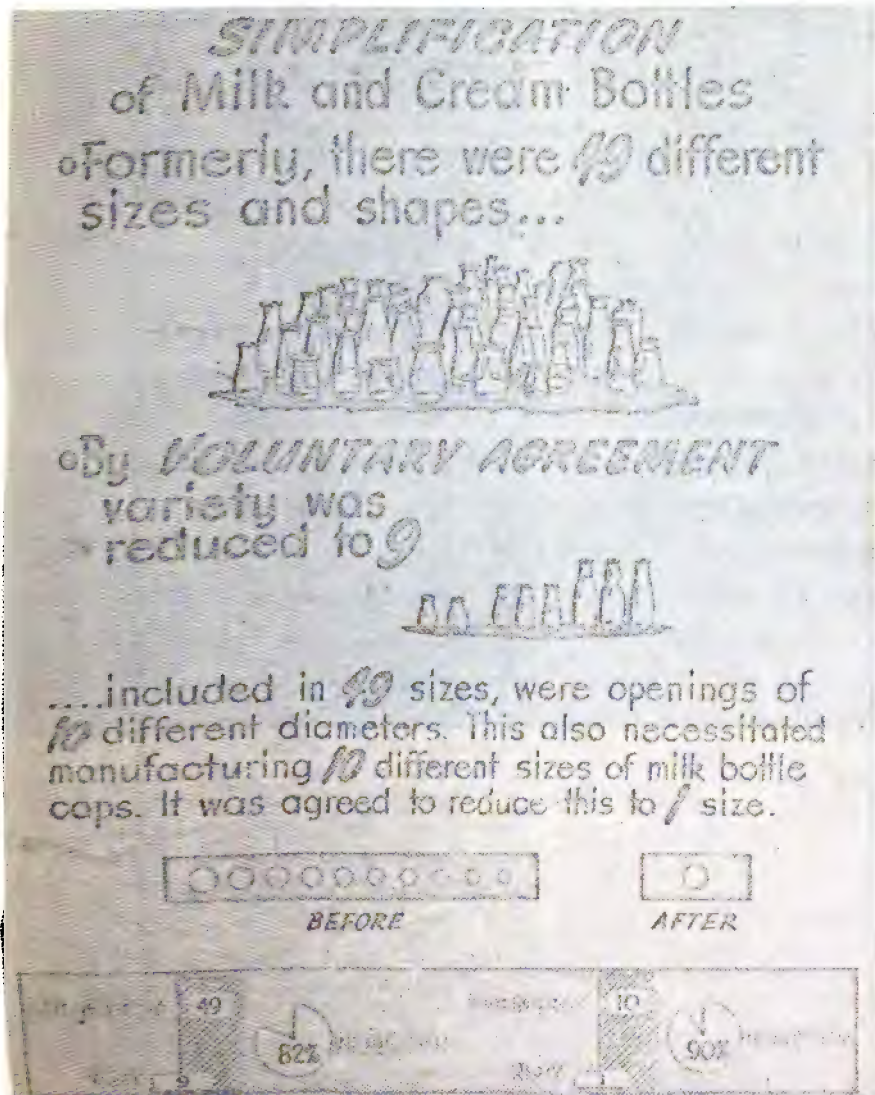
In any event, this bill will not permit arbitrary and unreasonable regulations regarding weights and quantities. The bill not only permits industry to participate in setting its own standards, but it explicitly requires that due regard must be given to cost, availability, materials, weights and measures customarily used, and competition.

The argument that regulation of weights and quantities would create excessive industry costs assumes that such regulations would go far beyond the continuous changes already being made in this area by

industry. Experience has shown that standardization can actually reduce costs and result in savings. Examples are savings which have been accomplished by the standardization of ice cream cartons and molds, can sizes and paper bags.

I would like to introduce for the record and make available to the committee several charts that have been put together by the National Bureau of Standards, which illustrates the experience that the National Bureau of Standards and industry have already achieved in this voluntary standardization procedure which has been in effect for many years.

The CHAIRMAN. They will be inserted into the record at this point. (Charts referred to follow:)



## *SIMPLIFICATION of CANS* (Fruits and Vegetables)

• Formerly, there were **200** varieties



• By *VOLUNTARY AGREEMENT*,  
this was reduced to **32** varieties



• This reduction aids considerably in  
conservation of vital materials

"Continental Can Co." has just announced a new  
"Tinless" tin can with a "plastic" solder. Thus,  
more conservation of vital materials is accomplished.



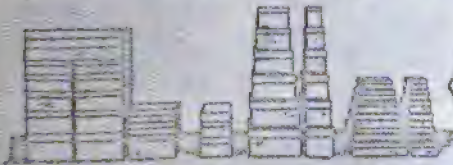


## SIMPLIFICATION of CONTAINERS (Hosiery Boxes)

• Formerly, there were 450 varieties



• By ***VOLUNTARY AGREEMENT***, the variety was reduced to 44 containers.



THIS MET ALL  
NECESSARY  
REQUIREMENTS

• By ***VOLUNTARY AGREEMENT***, any revision in the accepted number of containers can be made to meet any market changes.

450

450



44

44

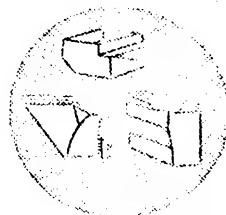
44

# *SIMPLIFICATION* of Pipes, Ducts and Fittings (WARM AIR AND AIR CONDITIONING)

◦ Formerly, there were *5,580* varieties



◦ By *VOLUNTARY AGREEMENT*,  
this number was  
reduced to *1,225*



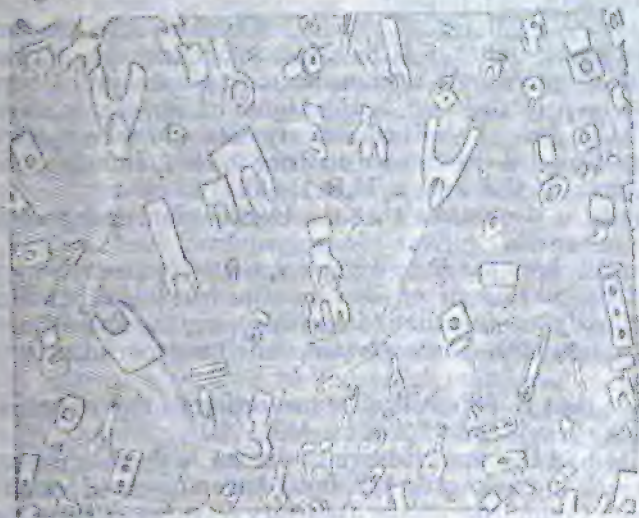
Many manufacturers now make only one set of sizes. This allows distributor or dealer to install new system in one day. Thus customer gets better service and lower prices.





# *SIMPLIFICATION of Carbon Brush Terminals*

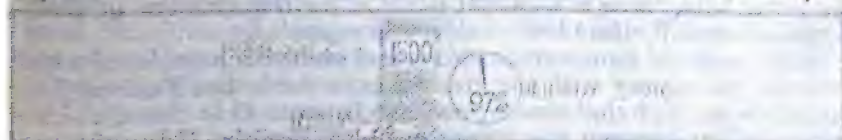
Formerly, there were 1500 varieties



By *VOLUNTARY AGREEMENT*, these were reduced to 28

THE FOLLOWING

Thus, not only was vital material conserved, but replacement of worn or broken parts was now made simple



**Secretary CONNOR.** In sum, Mr. Chairman, I believe S. 985 is a bill which will create mutual benefits for American consumers and American manufacturers. It is a bill to which the Department of Commerce vigorously subscribes and which we urge be quickly enacted.

Thank you very much, Mr. Chairman.

The **CHAIRMAN.** Mr. Dixon?

**Mr. DIXON.** Mr. Chairman, although these hearings are for the purpose of discussing not only H.R. 15440, 89th Congress, 2d session, and S. 985, 89th Congress, 1st session, but also a number of similar bills which have been introduced in the House of Representatives during the present Congress, I shall confine my discussions to these two bills.

S. 985, as it passed the Senate on June 9, 1966, is, with some differences, substantially the same as H.R. 15440.

May I state at the outset that the Commission endorses S. 985, as passed by the Senate.

No attempt is here made to discuss any specific provisions of S. 985 and H.R. 15440 or any provisions contained in the other House bills. You undoubtedly are familiar with such provisions and other witnesses before the committee, I am certain, will have comments regarding them.

We believe that S. 985 will offer protection to the consumer which, under existing law, is not afforded to him.

I have not had the opportunity to discuss with this committee the proposed truth-in-packaging bill, but I have appeared, at the request of the Senate Committee on the Judiciary on three different occasions to discuss with them such proposed legislation.

At these hearings I, on behalf of the Commission, have advocated that the Commission should be designated as the agency to administer such a law and that such administration should not be divided between the Department of Health, Education, and Welfare and the Federal Trade Commission, as is provided in both S. 985 and H.R. 15440.

The Commission is of the opinion that the problems which the proposed legislation seeks to solve are in the area of economic deception and not in the protection of health and insurance of safety. In the latter field, there is no doubt but that the Department of Health, Education, and Welfare has considerable expertise.

In the realm of economic deception and problems associated with it, however, the agency with the greatest expertise is the Federal Trade Commission. For that reason, we have believed that the division of responsibility between the Department of Health, Education, and Welfare and the Federal Trade Commission whereby the greater bulk of the authority to issue regulations would be assigned to the Department, creates a somewhat anomalous situation.

Both bills in section 11 have specific provisions to the effect that nothing in them shall be construed as repealing, invalidating or superseding the Federal Trade Commission Act or any statute defined therein as an antitrust act (H.R. 15440 also provides that nothing contained in the act shall be construed as "otherwise adversely" affecting "the Federal Trade Commission Act \* \* \*").

It is on the basis of these provisions, that I am assuming enactment of S. 985 will not in any way affect the jurisdiction of the Federal Trade Commission under existing law, and if this assumption is correct,

then such enactment should be an adjunct to, or a supplement to, the Federal Trade Commission Act and strengthen its effectiveness in protecting the consumer.

The goal of S. 985, as we interpret it, is primarily to enable the supermarket shopper to make an intelligent choice of products from a cost savings and a quality standpoint.

Section 5 of the Federal Trade Commission Act is directed toward the prevention of "unfair methods of competition" and "unfair or deceptive acts or practices" in commerce. Thus, in the absence of unfairness or deception, the Commission presently is not authorized to take action which would assure the shopper of being provided with sufficient information upon which to make meaningful and proper comparisons of goods in the supermarkets. Frequently the problem facing the shopper is one of chaos and confusion rather than deception.

All of us have had the experience of trying to determine whether we would save money by buying one "giant" or "family" size of a product rather than two packages of the same product in smaller sizes. For example, I am informed that recently a member of the Commission's staff sought to purchase for 88 cents a bottle of a certain mouthwash which according to the label contained 1 pint and 4 ounces. The clerk told him it would be cheaper for him to buy two of the smaller bottles of the same product which contained 14 ounces, for 98 cents. Of course, after some mathematical deductions on his part, he found the clerk was correct and so he purchased the two smaller bottles.

But why should a shopper be required to do this? It would have been much simpler for the larger package to state on its label that it contained 20 ounces so that he could compare this amount with the two smaller bottles containing 14 ounces each.

If in the example I have given, the bottles of mouthwash actually contained the amount specified on labels, there was no deception but there certainly was confusion. The subject bills are aimed at preventing such confusion.

Confusion and deception also arise out of cents-off labels. Many questions arise as to cents-off claims. What, for instance, is the price to which the cents-off statement applies? What legal means does the manufacturer have of guaranteeing that the cents-off has been, or will be, passed on to the consumer?

In this area of consumer purchases, the forces of competition do not always provide a sufficient safeguard for the consumer's interests. Our competitive economy, to be effective, proceeds on the assumption that consumers will have knowledge enabling them to make reasonably intelligent comparisons between competing products.

There does not appear to be any valid argument why the label on a consumer product should fail to disclose accurately in terms understandable to the consumer the nature of the product which is being offered for sale, how much is in the package, and the price. Also, there is no question but that consumers should be protected against packages which contain inordinate amounts of air or nonfunctional material. They should not be lured by fake "bargains," "cents off," "free deals," or "combination offers." They should not be confused by goods packaged in such miscellaneous sizes as to defy rational price comparisons.

Under existing law, with reference to consumer products, in order for the Commission to act there must be deception or misrepresentation in the packaging or labeling of the product, either pictorially or by other means. This includes the failure to disclose information on packages or labels, but the law is applicable only when the result is likely to be purchaser deception.

Because of this burden, the Commission has not found it feasible to issue orders requiring affirmative disclosures on packages of net contents or establishing reasonable quantities in which a commodity shall be distributed for retail sale, or defining what constitutes a "serving," or requiring labels to disclose information concerning product ingredients or composition.

With the exception of some instances involving the proper labeling of goods of foreign origin and those relating to deceptive pricing of various commodities by means of preticketing, the Commission, under the limited authority applicable to these practices granted by section 5 of the Federal Trade Commission Act, has issued relatively few cease-and-desist orders prohibiting deceptive packaging and labeling of consumer commodities.

In the instances where the Commission has proceeded, it has issued orders to require sellers of the commodities involved to cease offering them in containers or packages which are substantially larger in size or capacity than that required for packaging of the quantity of product contained therein (docket 3064, 25 FTC 937 (1937); docket 3732, 32 FTC 1014 (1941); docket 3729, 35 FTC 643 (1942); docket 5128, 39 FTC 188 (1944); docket 6580, 53 FTC 1174 (1957); and docket 8489, decided Dec. 24, 1963).

Additionally, it has prohibited packaging depictions which misrepresented the number of pieces contained in the package (docket C-690, decided Jan. 21, 1964).

And it has prohibited such practices as the use of a method of packaging insulating tape which gave a visually deceptive image of the amount of tape on the spool.

These, however, represent the extent to which the Commission has felt that it could go in this field under the Federal Trade Commission Act.

The Commission has been given specific authority by Congress to administer four labeling laws: the Wool Products Labeling Act, 1941; the Fur Products Labeling Act, 1952; the Flammable Fabrics Act, 1954; and the Textile Fiber Products Identification Act, 1960.

Gratifying results have been achieved from the enforcement of these laws in affording protection not only to consumers who purchase such products, but also to honest merchants and sellers.

The Wool Products Labeling Act covers the labeling of any product containing woolen fiber. It is the first act of this nature passed by Congress which provides for an affirmative act of labeling textile products. It covers both domestic and imported wool merchandise from the first manufacturing process applied to the wool until the wool is made into cloth and other end products.

Notable among the products covered would be men's, women's, and children's outer clothing, overcoats, jackets, macinaws, skirts, slacks, sweaters, hosiery, wool hats, and even wool house slippers.

The Fur Products Labeling Act covers the labeling, invoicing, and advertising of fur products from the manufacturer right on through to their sale to consumers.

The Flammable Fabrics Act, effective in 1954, prohibits the introduction or movement in interstate commerce of articles of wearing apparel and fabrics which are so highly flammable as to be dangerous when worn by individuals.

The Textile Fiber Products Identification Act became effective in 1960 and it has by far the greatest coverage of any of the labeling acts. It covers items made of natural fibers other than wool, reprocessed wool, and reused wool, as well as products which are composed of synthetic fibers or blends of synthetic or natural fibers. The labeling requirements of the Fur Products Labeling Act are also present here in substantially the same general fashion.

I refer to these acts not only because they are for the protection of consumers, as are the subject bills, but also they have demonstrated the effectiveness of congressional action directing an administrative agency to issue regulations which are to have the effect of law. Once this is done and they are violated, it is a per se law violation.

Just as these laws are adjuncts, so to speak, to section 5 of the Federal Trade Commission Act, so would be the subject bills if enacted. That is, they would spell out the acts and practices related to the packaging and labeling of consumer products which would constitute violations of section 5 of the Federal Trade Commission Act, and of the appropriate sections of the Food, Drug, and Cosmetic Act.

It then authorizes the Commission and the Department of Health, Education, and Welfare to issue the necessary regulations to make effective these provisions. This is the approach followed in the labeling acts.

I am convinced that enactment of these bills will also be beneficial from the producers' standpoint. The Commission has endeavored through its trade practice rules, guides, and trade regulation rules to achieve a measure of industrywide corrective action of unlawful industry practices through voluntary or guidance procedures. But we believe, based upon the Commission's experience in administering the labeling acts, that more prompt, equitable, and simultaneous corrective action can be achieved by enactment of the subject bills.

I request that the committee consider this statement as expressing the comments of the Commission on H.R. 7493, H.R. 15269, H.R. 15440, and H.R. 15707 on which we were asked to comment. This statement, which has been approved by and was made at the direction of the Commission, is in lieu of separate reports by the Commission on these bills.

In conclusion, may I reiterate the Commission's position that it favors enactment of S. 985 as it passed the Senate on June 9, 1966.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cohen?

Mr. COHEN. Mr. Chairman, it is always a pleasure for me to come before this committee to testify. This committee has done so much in the past for improvement of public health and consumer protection legislation.

This morning I want to discuss the support of the Department of Health, Education, and Welfare for fair packaging and labeling legislation. We are very gratified that the chairman has shown his

keen interest in the improvement of consumer protection demonstrated by the introduction of H.R. 15440 and also gratified to see the bipartisan support which has been given to this legislation.

The proposals contained in S. 985 offer reasonable solutions to the problems which were extensively explored by the Senate Subcommittee on Antitrust and Monopoly Legislation and the Senate Commerce Committee.

The Senate subcommittees have held hearing on this type of legislation over the 5-year period 1961-65. Six volumes of hearings have been published, containing more than 2,000 pages. The arguments pro and con for the legislation have been widely discussed.

Senators Prouty and Dominick have pointed out in their individual views in the 1966 Senate committee report:

The bill was the subject of long and careful consideration by the committee. Numerous executive sessions were held during which the bill was substantially amended and, in our view, greatly improved.

In opening the 1965 hearings Senator Magnuson said that in connection with this legislation "we are in a very complex and economically sensitive field." I believe S. 985 has been developed with a keen sense of what is reasonable and practical in today's economy, taking into account both the complexities and sensitivities present in industry and in the Congress.

I have appeared before this committee on a number of occasions. I hope to come back in the future and support other legislation improving consumer protection. I do not think the legislation before you today is the last time this committee will consider consumer legislation.

But this legislation is an important step forward. It does not solve all the problems. It is the product of compromise between those who want the Federal Government to take a stronger role in regulating and preventing the use of unfair or deceptive methods and those who favor exclusive reliance on present methods. I believe only experience—practical experience in operation—can judge the merits of the fine balance between regulatory authority and the use of voluntary product standards embodied in the bill.

In reading some of the testimony of those who appeared before these Senate committees in opposition to this legislation I am reminded of the opposition to the original Pure Food and Drug Act of 1906. Here is what one group said in July 1905 in an article entitled, "How To Fight Pure Food Legislation" in opposition to the basic legislation, which was finally enacted:

\* \* \* We believe that it is the part of wisdom to fight the proposed legislation on principle, to make no compromise whatever with the scamps who are behind it, and to refuse to treat with them on any kind of terms. \* \* \* Therefore, as we have said, it seems to us that the wisest course is to oppose all laws which have for their aim the regulation of private enterprise, under whatever pretext they may be urged.

I am sure that today there is widespread support among both industry and consumers for the laws of 1906 and 1938 and the constructive improvements of 1962 recommended by this subcommittee and passed by the Congress.

These laws have helped to preserve and expand private enterprise and assure fairer competition. When these proposals are being

debated there is strong opposition to any new legislation as a matter of principle, but after the Congress has modified various details and the proposals are enacted, they become an accepted and workable part of the American way of life.

I believe the same situation will prevail when this bill is enacted into law.

American consumers today have learned that they can rely on the wholesomeness and purity of most food and drug products. Industry and Government have established standards to safeguard the public health. These standards are enforced, not only by Federal and State officials but by conscientious and responsible manufacturers.

Yet even today after more than 60 years of effort and constant improvement of our food and drug laws, we find violations of these fundamental protections—violations due to carelessness, inadequate manufacturing controls, overhasty marketing, and excessive promotion. Nevertheless, industry today is to a large extent self-policing in the area of health protection and safety. Food and Drug Administration officials do not maintain a 24-hour watch over every processing plant, yet the number of violations of law, in comparison to the unlimited possibilities for dodging the law, is very small.

We believe most industry is responsible. It is significant to note, however, that the development of a philosophy of responsible self-regulation parallels almost exactly the development of a strong and effective food and drug law. Experience indicates that voluntary regulation needs the support of law in order to make it effective, so that the violators, who are in the minority, do not take unfair advantage of the vast majority of companies that are fair, honest, and conscientious.

The shocking irresponsibility of some companies at the turn of the century was called to the attention of the public by Dr. Harvey W. Wiley, but it was not until the Congress enacted basic legislation that industry assumed more responsibility for the safety of its products.

Thus, over the years and through a combination of responsible manufacturers, vigorous enforcement of the food and drug laws, and growing public enlightenment, we have established a supply of foods and drugs that is, in the main, safe and reliable.

While we have reached a point in time when the concept of safety and efficacy with respect to food and drugs, has been firmly embedded by Congress in law and accepted by our society, we have not yet fully developed the concept of truth in packaging and distribution of these commodities. In the area of consumer health and safety, the old doctrine of "buyer beware" has been generally replaced with "seller beware," yet in sales promotion and merchandising, the "buyer beware" doctrine still prevails in many cases.

Existing law and existing rulemaking authority are not adequate to update packaging and labeling regulations in the light of dramatic changes in technology and marketing practices. Just as the small grocery store, manned by salesmen-clerks, is being supplanted by the huge self-service supermarket, so must existing practices be supplanted by new consumer interest measures.

What the proposed legislation does is to give clear and firm statutory authority to the Department of Health, Education, and Welfare and

the Federal Trade Commission to promulgate regulations that apply industrywide to accomplish the purposes of the basic laws enforced by these two agencies. Thus, uncertainties will be clarified and voluntary compliance by responsible industry will be greatly facilitated.

We pledge our Department's full cooperation with industry and the other governmental agencies in making this legislation work fairly, efficiently, and effectively. We believe it can be administered in a way which will assure continued legitimate innovation in packaging, labeling, and merchandising, and at the same time protect the consumer's interest.

In conclusion, Mr. Chairman, we urge the prompt and favorable consideration of this legislation by your committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Cohen.

Mrs. Peterson?

Mrs. PETERSON. Thank you, Mr. Chairman.

It is a great honor for me to be able to testify before your committee. It is the first time that I have had this opportunity. I have testified before many other communities, but I am pleased to have this opportunity to testify before you today.

I want to congratulate you, Mr. Chairman, for your leadership. I would like to congratulate the entire committee. I think yesterday you took a great step ahead for the American consumer, the American people, in your legislation on a national safety program and the establishment of safety standards for motor vehicles. I feel that today you are beginning another work in another area that is equally significant.

I appear before you today in behalf of the fair packaging and labeling legislation. I speak to you today in my capacity as special assistant to the President for consumer affairs, and as Chairman of the President's Committee on Consumer Interests.

I have previously testified for this legislation for the Department of Labor, in my position as Assistant Secretary for Labor Standards. I must say that we feel that there is a very strong relationship between what a persons earns and what he spends. So there is an extremely important relationship in this bill between our interest in consumer affairs and in labor areas as well.

On behalf of the administration, I support S. 985, the fair packaging and labeling bill as passed by the Senate. President Johnson, in urging fair packaging and labeling, has stated:

The Government must do its share to insure the shopper against deception, to remedy confusion and to eliminate questionable practices.

S. 985, the fair packaging and labeling bill, is a good bill. I speak confidently when I say that American consumers support this bill. President Johnson and President Kennedy both have urged fair packaging legislation. President Kennedy, in his first consumer message to the Congress in 1962, said:

\* \* \* consumers have a right to expect that packages will carry reliable and readily usable information about their contents. And those manufacturers whose products are sold in such packages have a right to expect that their competitors will be required to adhere to the same standards.

President Johnson has supported fair packaging in both his consumer messages. He has said:



The shopper ought to be able to tell at a glance what is in the package, how much of it there is, and how much it costs.

I must say I especially like that small phrase of "at a g'ance" since I am the one in my household who does the shopping. How important it is to be able to tell readily and easily what is in the package, how much it contains, and what it costs.

The President goes on to say :

Packagers themselves should take the initiative in this effort. It is in the best interests of the manufacturer and the retailer as well as the consumer.

The Government has had, and has exercised a responsibility toward the consumer in this field for a long time. But the case-by-case trail to which we are limited by existing law is a long winding one.

More clear-cut regulations are needed. \* \* \*

Mr. Chairman, this is precisely what the bill would accomplish.

It would eliminate much of the confusion which shoppers meet today in the supermarket. If this bill were to become law, we as consumers could see quickly and easily from the label on the principal panel of the package or the can how much we are buying, and what we are buying. We would be able to compare quantities and prices of competing brands much more readily.

We would be spared many of the present near deceptions—however legal they may be—that make really economical buying so difficult. I refer to the superlatives describing size, the proliferation of weights, the ill-defined "servings," the confusing manner in which quantity is stated, and the "cents off" deals that may not represent true price reductions. In short, this legislation would help the consumer to buy more wisely and more economically and, may I add, with far less frustration than at present.

At the same time, Mr. Chairman, I am convinced that this measure would benefit manufacturers and distributors as well. The mandatory provisions for labeling establish clear ground rules for packagers. The bill would enable producers to compete on quality and price of their products and the attractiveness of their presentation rather than irrelevant packaging gimmicks.

Most manufacturers would prefer to sell on the merits of their product, not on the cleverness of its label. I have been told by wholesalers and retailers that they would welcome it, too.

The fewer sizes and the fewer odd "cents off" deals they have to contend with, the simpler their stock records and the less shelf space they need. Their costs would be reduced along with their customers' dissatisfaction.

At the same time, Mr. Chairman, producers are amply protected against any possible arbitrary actions in the application of the permissive sections of the bill. This is as we want it. The conditions under which commodity-by-commodity regulations can be issued are clearly spelled out, and industry is invited to determine its own voluntary standards to reduce the confusing array of weights and sizes.

The bill, in short, is positive, not punitive; and constructive, not constrictive.

Again, the reaction of consumers to this bill has also been favorable. Ever since assuming my consumer office 2½ years ago, I have received

a continuous flow of letters from thousands of consumers telling of packaging abuses and urging remedial action.

Packaging has, in fact, been the leading topic of all our mail. In my term of office, we have conducted four consumer conferences in various parts of the country. We also have met with individual consumers—and consumer organizations and other groups—in most of the States. In these meetings, no subject has been raised more often than the need for clearer and more informative labeling and more comparable package sizes.

Continued support has come from prominent organizations representing a broad cross section of the American public. Senator Hart has estimated that organizations passing resolutions in support of fair labeling and packaging have a combined membership of over 40 million. They range from national organizations to local groups, from women's clubs to trade unions, from the young to our senior citizens.

Mr. Chairman, there is clear-cut need for this legislation. It grows out of the abundance and complexity of the American economy with its thousands of packaged products. It grows out of the efficiency of our large-scale, self-service system of retailing. No longer do we have the informed clerk and the solicitous proprietor to answer our questions. The label on the package is frequently the sole source available to tell us what we must know about the products we select.

It should do just that, in a simple, direct, clear, and honest way.

Modern marketing calls for modernization of our labeling and packaging laws. We need simple, understandable, specific rules about labels. Legal action against deceptive and unfair acts on a case-by-case basis is not effective in regulating misleading and confusing packaging practices. It is too slow, too cumbersome. A poor label with inadequate information can prevent price comparisons and economical shopping, whether or not the intent is to deceive.

Some packaging practices stump even college-educated housewives. In an experiment at Eastern Michigan University last year 33 young married women—all with at least 1 year of college training—shopped in a supermarket for the most economical package of each of 20 specified products. They were told to get the largest quantity for the lowest price.

They were given more than the usual time taken for shopping by housewives. Yet they made a lot of mistakes. In fact, 43 percent of their purchases were not the most economical. And they spent 9 percent more money than if they had chosen the best value.

I emphasize this study was based on quantity, not quality. Quality is a personal matter, but you have to know the price per unit so that you have a basis for the decision as to whether a higher price is worth paying to get the additional quality. You could not make a study of this type of purchases on quality. This was a quantity study.

The college-educated women made no mistakes on staples like sugar and flour, which are sold in whole-unit packages. They had the greatest difficulty with the products where there was a proliferation of sizes and mixed units of measure.

This legislation would reduce this kind of confusion and would result in savings and more value for consumers.

Let me now turn to the specific provisions of S. 985 and show, by means of examples and my own experience, how this bill would assist in restoring the consumer's ability to seek out the best selections and to make effective price comparisons of packaged and canned goods.

The mandatory provisions of the bill, in section 4, deal exclusively with labeling. Every package must have a label identifying the contents and the manufacturer and the net weight.

The statement of net quantity must be placed in a prominent position on the principal panel of the label and in a line parallel to the base of the package. It must be printed in legible type against a contrasting background. To simplify quantity comparisons which are obscured by different units of weights and measures, the bill requires that when the contents are less than 4 pounds or 1 gallon, they shall be expressed in ounces or in whole units of pounds, pints, or quarts. Finally, it bans qualifying phrases in the statement of quantity. I am referring to the "giant quart," and the like, which enlarge the quantity.

The Senate Commerce Committee was unanimous in supporting these mandatory provisions. The minority members stated it very well.

Packages should be labeled so the busy housewife can determine their contents without juggling the package six different ways, without having to convert from pints and pounds into ounces, and without the need for a magnifying glass.

Now I would like to add parenthetically that one of the satisfying factors of working on this bill, Mr. Chairman, is the bipartisan support it has received. This is an issue for all the people, and I feel comfortable in the fact that it does pass across party lines so distinctly.

The provisions in section 5 are discretionary. They give the Secretary of Health, Education, and Welfare and the Federal Trade Commission authority to issue additional regulations on a commodity-by-commodity basis whenever necessary "to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity." There are definite conditions which must be met before these regulations are issued, and the procedural safeguards are clearly spelled out. In my opinion, they provide full protection against any possible arbitrary application.

Let me consider these sections separately and illustrate their importance.

Subsection 5(c)(1) gives authority for the establishment and definition of "standards for characterizing the size of a package." It aims at bringing sense out of the chaos over the "king," "giant," "family," "extra large," "jumbo"—and even, sometimes—the "small," "medium" and "large" sizes in many product lines.

I have had many letters complaining about the absurdities and the confusion of this competition in adjectives. And I have had many experiences myself in seeing confusing size terminology as I shop. Many people have written to me of their experiences with these undefined sizes which differ in quantity from one manufacturer to the next.

For example, a husband wrote telling how he had been instructed to buy the large size in soap powder. He bought the "large size," which is really very small, and then found that his wife really wanted what is called the "giant size," which is actually larger.

The other day I heard a woman call to her son and say, "Get me a big size" of a certain package. He came back and she said, "Don't

you know, it is a jumbo that is the biggest?" This is the kind of confusion you hear when you go around the shops.

A man from Milwaukee discovered this when he purchased a tube of shaving cream. He wrote me, enclosing the package:

I would like to bring the attached package to your attention in connection with your "truth in packaging" legislation. As you can see, the package is marked "large." However, I think it is the smallest made by (Company X).

On a supermarket shelf this week were a "regular size" package and a "large size" package of the same brand detergent, both with the same weight of 1 pound 4 ounces.

There should be a correlation between what a size is called and what it contains. It is irrational for one manufacturer's "large" to be the same as his competitor's "medium" size. Yet a week ago a Washington housewife went shopping for toothpaste and found two brands of the same quantity—1.75 ounces—packaged in the same size box for the same price. One was called the "medium size." The rival brand was the "large size."

In another supermarket, I found detergent powder sold by the following designations: "regular," "medium," "king," and "giant." Let's look at what is called "giant." In four different brands these "giants" contained 2 pounds, 2 pounds 6 ounces, 3 pounds 1 ounce, and 3 pounds 6 ounces.

The size designations without standards permit the manufacturer to lower the quantity of a product while maintaining the same price and even the same size box, without the consumer knowing about the quantity change.

How many times we pick up or order a size which we have become accustomed to using in our household without examining the actual weight. This practice has been called "concealed inflation." One housewife from Denver, Colo., alert to such subtle changes, wrote to me:

Will you please look into the matter of the "king size" box of (Brand X) [soap powder] weighing 5 pounds 4 ounces and selling for \$1.17. Two weeks ago I bought the "king size" box (both the same box size) of (Brand X) for \$1.17 and it weighed 5 pounds 12 ounces. I think this is an outrage, one-half pound less in weight. To me this is wrong when both boxes are "king size." There should be a standard weight when it is called a certain size.

Confusing terminology stands in the way of easy price comparisons. A degree of order is certainly called for. On this provision also there are general agreements in the Senate Commerce Committee. The minority views of the Senate Commerce Committee supported this provision, saying:

There being extensive law already on the books barring the deceptive use of such terms as "large size," "family size," or "giant size," we see no crippling consequences in providing slight additional authority over the use of such terms.

Section 5 (c) (2) deals with servings. It gives authority to "establish and define the net quantity of any product (in terms of weight, measure, or count) which shall constitute a serving." The need for this provision is obvious. If one label says the package has "five servings" and another says it has "seven servings," the one with seven servings will obviously have an edge with the buyer. But since every manufacturer is free to define a serving, it may well be that the seven

servings, taken together, may amount to less than the rival five servings.

My letters on this topic point up the difficulties. A Rose Valley, Pa., woman wrote:

Aprpos of your drive to insure a fair deal to the customer, I submit a label from a can of peaches, which I purchased \* \* \* for 43¢. This can contained only five peach halves which were literally swimming in juice. Please observe the printed description, particularly "Average Servings \* \* \* 6-7." Can you visualize the seventh average serving? I feel this is deceptive and dishonest. (I use this example to illustrate the "serving" problem, while recognizing that there is a standard of fill of container established for canned peaches.)

Perhaps the classic complaint in this area came from a New York City woman who wrote to the manufacturer and sent me a copy of her letter. In it she said:

GENTLEMEN: What kind of game are you playing?

Your mashed potato flakes are sold in three sizes: 8-serving box contains 5½ ounces and uses .718 ounce per serving; 24-serving box contains 15½ ounces and uses .656 ounce per serving; 25-serving box contains 16 ounces and uses .640 ounce per serving.

Looked at another way, the 25-serving box weighs ¼ ounce more than the 24-serving box. Therefore, one serving weighs ¼ ounce. Therefore, a 16-ounce box makes 64 servings (four quarter-ounces per ounce times 16 ounces).

Here again, the Senate Commerce Committee was in general agreement. The minority voiced its approval:

Neither do we quarrel with allowing a Federal agency to define the quantity of a product which might constitute a serving, thankless though the task may be.

Section 5(c) (3) aims at curtailing the use of meaningless bargain deals, particularly "cents off" deals. It would—

regulate the placement upon any package \* \* \* of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents.

Every shopper likes a bargain, and this fact is responsible for the widespread use of "cents off." The problem here is that "cents off" frequently does not represent a true bargain, creating an additional barrier to price comparisons. The difficulty arises because the deal is advertised on the package by the manufacturer, but it is implemented, or not implemented as the case may be, by the retailer, over whom the manufacturer has no control. The common phrase "cents off the regular price" creates another difficulty in price comparisons. What constitutes the "regular price"?

This particular practice has led to a great many complaints from consumers. A woman from Des Moines wrote, for example:

By the enclosed label you can see that there is a definite moral promise that this can of coffee is sold to me at 20 cents off the regular price. I wrote to the manufacturer and received the reply that they have no control whatsoever over the price when I purchase it. This seems to me completely dishonest. The label definitely states "20 cents off." Off what?

One of the complaints I get in many letters is the practice of labeling a product, "NEW"; I am told that the only thing new that could be found is a reduction in the contents with no reduction in price. But the "NEW" is prominently on the label.

There is a thread that goes through the letters that I am getting and the conversations that I am having with many people, and it goes to this very question of the moral and ethical standards in these practices. It is another subject, but I think it does indicate a growing awareness on the part of our consumers about many of these problems that we confront every day in the marketplace, and in raising our families, I might say as well.

A Madison, Wis., man wrote, enclosing a soap label:

\* \* \* It is worth noting that apparently identical bars of this soap—all marked “5 cents off”—were being marketed at the (company X) store on March 19, 1966, at two different prices, 2 for 28 cents and 2 for 35 cents.

The point is that when the price is not properly reduced, the “cents off” can be confusing.

The confusion can be encountered anywhere. Some of these “cents off” deals are actual price reductions, but the consumer cannot always be sure they are.

A Washington housewife bought a box of tea last week which carried a price of 29 cents and a label that promised a 5-cents-off deal. The checkout girl charged her only 25 cents. Another Washington shopper found identical brands and sizes of toothpaste in a store, one box was marked “5 cents off”, the other with no special deal—the price of both was the same.

A correspondent from Evanston, Ill., expressed sentiments of many when she wrote:

Isn't it time for an adequate truth-in-packaging law? Please. Six cents off here, 10 cents off there, with stores shifting their own prices at times.

Again, to quote the Commerce Committee minority views:

Similarly, with respect to “cents off” promotions, while existing Federal Trade Commission guides against deceptive pricing appear to provide adequate protection to the public, we are not disposed to object to making the authority apparent, properly safeguarded, to deal effectively with the problem.

Section 5(c) (4) deals with a clear statement of ingredients. It would—

require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity.<sup>1</sup>

This is essential, because knowledge of the composition of the product is necessary for a proper price comparison. Pancake sirups containing maple sugar provide a good example. If one brand contains more maple sirup and less cane sirup than another, it is worth a higher price. Yet I have never seen the ratios of these sirups printed on any label.

Fruit drinks provide another case in point. Consumers want to know how much of the drink is fruit juice; how much is water and other ingredients. It affects their judgment about its health value as well as its price.

The final category of these discretionary provisions tackles the important and difficult problem of how to reduce the proliferation of package and container sizes.

<sup>1</sup> There are two exemptions to this provision: It shall not apply to any consumer commodity for which a definition or standard of identity has been established; and it does not require the disclosure of information concerning proprietary trade secrets.

Section 5(d) (2) provides for regulation of weights or quantities in which a commodity may be sold if the ability of consumers to make price comparisons is likely to be impaired.

This would be accomplished by encouraging the industry itself to agree upon most wanted sizes and to establish under the voluntary product program a reasonable range of weights and measures under procedures already established by the Secretary of Commerce. These procedures require a consensus among interested parties—producers, distributors, users, and consumers and any other appropriate general interest groups.

Such a voluntary procedure for weights or quantities would be initiated by the publication of a finding of need by the administering agency, after which a producer or distributor might request the Secretary of Commerce to set in motion the machinery for agreement on a voluntary product standard.

If this were not accomplished within a year—or a year and a half, at the discretion of the administering agency—the administering agency itself might promulgate regulations to establish reasonable weights or quantities for a consumer commodity. This provision further protects the businessman and the consumer by assuring reasonable weights and quantities. It requires consideration of the costs of the packaging and the costs to the consumers, the range of existing sizes, the materials involved in packaging, the competition between containers made of different types of materials, and the weights and measures customarily used.

It also has specific protections to prevent changes which would affect existing voluntary product standards, reusable glass containers presently in use, weights, or measures of less than 2 ounces, and customarily used uniform-size containers with different weights because of varying densities, such as baby foods.

I would like to emphasize the reasonableness of the thought that has gone into this bill as it is now drafted, to be sure that the legitimate difficulties that might be encountered are honestly and adequately cared for, still preserving the right of the consumer and the needs of the consumer, and preserving the rights and the needs of the business community as well.

Many voluntary standards have developed on the initiative of industry. Both manufacturers and consumers have accepted standard-size jars of sour cream and various standard-size cans used for fruits and vegetables agreed upon by the Canners Association and generally followed by the industry. They provide variety of size for the small or the large family; for the apartment with limited storage space or the house with an ample storage cupboard or a big freezer. At the same time, they make possible direct price comparisons of different brands or varieties of the same product in the same size container with the same net weight. While this bill does not standardize the size or dimensions of packages or containers, but rather permits voluntary regulations of a reasonable range of weights or quantities where such are necessary for price comparison and feasible, I point this out only to illustrate the favorable experience which industry has encountered in the operation of this program.

I wish manufacturers and package designers knew how much housewives appreciate packages in comparable weights and quantities like

sugar and flour, all sold in even pounds, and like regular coffee in pounds and half pounds. I like attractive bottles and packages as much as anyone. However, I do not believe that restricting the numbers of weights to a reasonable range will eliminate imaginative packaging and innovation.

Rather, it should challenge the producer to concentrate his new and unique packaging concepts within reasonable bounds.

Studies of efficient shopping, like the Eastern Michigan University survey I mentioned earlier, all indicate that the greatest number of errors on "best values" came from packages that are in odd quantities that are not comparable.

Mr. Chairman, by rationalizing package weight ranges and improving labeling this bill will help buyers to save time and effort, to get more value for their money—and to save money, too. And let us not underestimate these savings. On each item, the saving may be only pennies, but pennies add up. And where incomes are very limited, every penny counts.

No one can estimate total savings with accuracy, but there is no doubt that they are significant.

The packaged goods covered by this bill account for nearly 40 percent of average family expenditures on nondurable goods; that is, all goods in the family budget except automobiles, refrigerators, furniture, and the like; and for 17 percent of expenditures on all goods and services. Expenditures on packaged goods represent a significant proportion of the family budget. These estimates by the Bureau of Labor Statistics are based on the Bureau's survey of family expenditures in 1960 in selected large cities.

Consider the importance of food. Food bought for home use takes nearly 20 percent of the budget of an average family with an income of \$5,550 after taxes, and almost 25 percent for families who have only \$2,000 to spend. Packaged and canned foods like bread, cereals, canned fruits and vegetables, and frozen foods make up two-thirds of the food budget of the average family, and a still larger share for poor families.

Now, add to food the many housekeeping supplies—soap, detergents, household paper products—and the cosmetics and toilet goods which this bill covers—and you can see how important it is to make the savings that could come from better price comparisons. For the low-income families, these "savings" are not saved money, but money needed to spend on more or better food and other household supplies.

We all realize, Mr. Chairman, that fair packaging and labeling legislation is not new. The Constitution provides for the establishment of weights and measures. What this bill really does so effectively is to update our weights and measures legislation. It also updates and implements our laws governing labeling and packaging. It is essentially a modernization bill.

We have had labeling laws since early in the 20th century, ever since the passage of the first Food and Drug Act. We have long had laws forbidding false advertising and deceptive practices and laws preventing acts which interfere with competition. True competition requires effective price comparison. This bill would go a long way toward providing it.



S. 985 builds upon existing laws. It has the great merit of establishing clear, specific, and positive rules for informative labeling, especially for designations of net weight. But its most important feature is that it makes possible direct and specific regulations on commodity lines. The complexities of present-day packaging and the confusing and misleading practices of the modern market cannot be contained by laws designed to deal with occasional deceptions among the few prepackaged groceries of 50 years ago. The legislation provides exemptions where needed and it carries the usual procedural safeguards.

Mr. Chairman, this bill has had long and careful consideration. There are hundreds of pages of informative record from these hearings. This record bears testimony to the spirit of cooperation in which this legislation was shaped. Criticisms were considered and many constructive changes were made. The Senate Commerce Committee marked up this bill through long executive sessions. S. 985 reflects this careful consideration. Its positive nature is best indicated in the declaration of purpose:

Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents, and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

Mr. Chairman, this is a laudable purpose and policy. This legislation is in the public interest. I urge that this bill be given favorable consideration by this committee, so that it may become law in this session of the Congress.

Thank you.

The CHAIRMAN. Thank you very much.

The Chair will state that earlier we called on the Honorable Benjamin S. Rosenthal of New York to come forward. He was unavoidably detained and could not be present when we convened.

He now is here but has other business and if the panel will bear with me, I would like to give Mr. Rosenthal an opportunity to present his testimony at this time.

We sometimes have to do this in order to accommodate work on other committees.

You may proceed, Mr. Rosenthal.

#### STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. Thank you very much, Mr. Chairman.

Mr. Chairman, I am glad to have this opportunity to testify before you today on behalf of your bill, H.R. 15440, and H.R. 16429, an identical bill cosponsored by me, which are commonly designated as "truth in packaging" legislation.

Mr. Chairman, this is a good bill but it is far from the end of the rainbow. I don't think we should be satisfied at all with enactment of this bill or say we have done sufficient for the American consumer. Considerably more has to be done.

I am doubtful about the long period of delay in the enforcement provisions of the bill. I have cosponsored this bill, and I have done it because I think it is a starting-off point for discussion.

For 4 years, Members of Congress have been debating the need for this measure while their wives, lost in jungles we call supermarkets, have been trying to understand why a "giant economy size" is a better buy than a "jumbo sale special." My point, of course, is that evidence of misleading packaging is something with which all of us are now well acquainted. Its larger significance, however, is yet to be fully appreciated.

The effectiveness of a market economy requires something we like to call "consumer sovereignty." The preconditions for that sovereignty are knowledge and the freedom to choose. When those conditions are threatened, the effects are felt throughout the market system.

And, of course, the most basic economic right, the right to be informed, is placed in extreme jeopardy. To protect that right is the function of the Federal Government, both because of a general commitment to justice, and a specific obligation to assure the efficiency of the market.

I take these principles to represent the basis of these hearings and of the legislation we are considering. We are familiar with the sort of abuses the legislation before us is designed to correct. There is ample evidence, which I am sure the committee will be soliciting from qualified experts, which documents the nature and extent of deceptive packaging.

Much of this evidence has already been brought before the Senate Committee on Commerce. Similar documentation has been collected by the National Commission on Food Marketing, of which I was a member, and which recently concluded in its final report to the President:

Packages and their labels should assist consumers in gaining an accurate impression of the contents and in making price comparisons.

None of this evidence is esoteric or difficult to procure. "Cents off" sales and packages are available in any modern market, though we usually have no idea from what initial price those unspecified cents have been deducted.

"Large economy size" packages appear on our shelves. Yet none of us have any real idea whether the implied savings has any basis in fact. For we cannot easily compare package weights and qualities.

The point is, Mr. Chairman, and members of the committee, our wives—actually all American consumers—are shopping blindfolded, in a market which is presently serving to mystify them into purchases of whose wisdom they can never be sure.

This is a condition of relative anarchy, a breakdown in a system which pretends to be equitable though it often victimizes those whom it is intended to serve. It is a condition which requires quick correction, and correction by the only power with proper neutrality and power—the Federal Government.

The basic purpose of this measure, then, is to return packaging to its initial function: to provide clear information and thus promote informed choice. This principle underlies the labeling standards which the Federal Trade Commission and the Food and Drug Administration would establish for all packaging.

Such standards, for example, would guarantee clear commodity identification and accurate statement of weight. They would prohibit use of misleading qualifying phrases such as "jumbo," or "giant," or distorted claims to unspecified price savings. They would require label information designating ingredients and composition, which would appear in clear lettering parallel to the base of the package.

I believe these standards are an absolute necessity if we are to assure consumer sovereignty in a market characterized by increasing proliferation of goods, new techniques in advertising, and rapid development of new products.

It should be noted, in passing, that the legislation before the committee has highly flexible enforcement provisions. Many of the regulations are discretionary; and much room, perhaps too much, is left for voluntary development of standards.

I want to make it clear that I regard it as important that we give industry the chance for self-improvement. Yet, I think it equally important that the committee and the Congress be quite clear on the risks we might run by allowing too many loopholes. We cannot pass a bill which contains within itself the seeds for its own destruction. For that reason, let me touch upon several problems regarding the implementation of the legislation before us.

I am initially disturbed by the possibility of long delay in the enforcement of the legislation before us. As presently planned, the bill will not take effect until 6 months after enactment, and the enforcing authority may at its discretion delay the effective date an additional year for any class of commodity.

I would hope the committee would give consideration to the adequacy of such a schedule, and the possible loopholes provided in the sections giving companies a year to develop voluntary standards.

Nor am I altogether confident that voluntary standards can be effectively developed and still meet the specific consumer interest. The legislation we are discussing today provides that in developing voluntary product standards: "Such procedures shall provide adequate manufacturer, distributor, and consumer representation."

Yet who can really represent the consumer? Existing consumer lobbies are in no way as organized and powerful as producer organizations. Neither the President's Committee on Consumer Interests, nor the Consumer Advisory Council can effectively present the consumer viewpoint in standards review committees.

And of course, voluntary standards are difficult to enforce. If they are being ignored, they must then be made mandatory before the Food and Drug Administration can seize the goods, or the Federal Trade Commission can issue cease and desist orders. And the process of delay and obstruction can continue still further.

Federal Trade Commission cease and desist orders are issued only after full determination of "unfair or deceptive acts or practices in commerce." Penalties can be imposed only after subsequent violations. These penalties, in turn, may be appealed through the courts.

In the meantime, unfair and deceptive practices continue, the consumer remains a victim rather than a beneficiary, and the obedient and cooperative businessman is placed at a marketing disadvantage. The prospect, in short, is not a happy one. Those of us who believe in the

goals of truth-in-packaging have reason to be confused and skeptical concerning the prospect of its swift and effective enforcement.

In reading the extensive hearings already held on this legislation, one is not impressed by the lack of evidence on deceptive packaging. We all know the problem is a very real one. That is why I believe the legislation we pass must be vigorous, and our own intent clear and firm.

We should try to make it known, in our legislative history, that the most important violators, not the easiest to catch, should be prosecuted first. It will require political courage and muscle to ignore minor violations by small firms, and concentrate on the hard-to-win but vital cases against corporate giants whose legal and material resources make them difficult to prosecute.

Yet these are exactly the cases of which the American consumer is most aware. The important battles must be fought and won early if the war against misleading packaging is really to be won.

This is why I hope the committee will give due consideration to the entire problem of enforcing truth-in-packaging legislation. The Federal Trade Commission's record of prosecution has not been impressive over the past several years. The Commission is slow. It shows reluctance to take on tough, but critical cases.

Are we really confident that the Commission can handle the new load of work which will be assigned to it by this legislation? I have my doubts. Nor am I confident that there will be effective enforcement coordination between the Federal Trade Commission and the Food and Drug Administration.

I would hope the committee would solicit further information on the mechanisms for cooperation between the two.

I believe the American public wants this legislation passed. I believe the Congress is adequately apprised of the conditions which warrant its passage. I am aware of the problems in reaching a proper balance of voluntary and mandatory standards, and of necessary and discretionary enforcement. But I also believe the judgments must be weighed on behalf of the consumer who has for too long been "the forgotten man of the American economy."

Mrs. Peterson's office has done an admirable and very useful job, Mr. Chairman, in all of these areas, but still they do not have a statutory basis for operation and lacks, in my opinion, adequate staffing to really do a job for the American consumer.

The American consumer will not have any voice, any representative on any of the voluntary panels that are going to effect the regulations under section 5 of the bill.

I think without being necessarily critical of the FTC that their staffing procedures are somewhat inadequate. I think in some cases, there has been even a flabby performance of cases such as there are some cases that have taken 30 years for final disposition and still have yet to be disposed of.

The FTC in recent years has turned the corner from having principally economists to have principally lawyers. I think the FTC has often taken on the easy case against the small manufacturer, the small producer, rather than take the more difficult case against the powerful Wall Street law firms that represent the national manufacturers.

I think all of these things the committee should take into consideration.

As I suggest, Mr. Chairman, I think the committee ought to consider this bill a first step rather than the final culmination of the efforts on behalf of the American consumer.

I am delighted that you have permitted me this opportunity, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Rosenthal. I want to thank you for giving us the benefit of your views.

Mr. Springer.

Mr. SPRINGER. May I say to my distinguished colleague from New York: Are you familiar with the activities of the Federal Trade Commission?

Mr. ROSENTHAL. Yes. I also have two staff aids spending the entire summer examining records of performance of the Federal Trade Commission. I personally plan to make a number of special audits concerning the activities of the Federal Trade Commission.

I might also say I was a member, together with the distinguished gentleman from Kansas, Mr. Cunningham, of the National Commission on Food Marketing. The commission in its final report recommended a bill similar to the one under consideration here today, and we covered much ground and much territory concerning the activities of the Federal Trade Commission.

Mr. SPRINGER. May I ask, does the gentleman think now that the Federal Trade Commission has jurisdiction covered by this bill?

Mr. ROSENTHAL. I think the Federal Trade Commission in the present structure couldn't conceivably enforce the kind of things the American consumer needs.

Mr. SPRINGER. I just want to be sure, because the Federal Trade Commission is under our jurisdiction. I want to be sure that the record is clear on this. You understand they do not have jurisdiction of this problem at this time?

Mr. ROSENTHAL. I think the point is that their present structuring does not permit them to act prudently and wisely in the effective enforcement of the measure.

I think the most important thing that can ever be done for any group in the country is for Congress to affirm by statute what they want done. The Federal Trade Commission presently is, of course, interested in deceptive advertising, deceptive selling practices.

But until Congress says to the Federal Trade Commission or any executive branch, including Mrs. Peterson's branch, a branch that is thoroughly sympathetic to the essential points of this bill, "this is what we want done, and we as the representatives of the American people statutorily say this is your responsibility," it will never be done.

Mr. SPRINGER. Then you are in agreement that the Federal Trade Commission at this time does not have authority?

Mr. ROSENTHAL. I think the authority that they have is—

Mr. SPRINGER. Could you answer that question first instead of just going around the barn?

Mr. ROSENTHAL. It is not necessarily going around the barn. I think their jurisdiction is fudged precisely the same way my answer is fudged. They do and they don't have jurisdiction. I am interested in enforcement powers.

The question, in my opinion, is until Congress gives some Executive Branch direction to act, that will not be done in the best interest of the American consumer.

Mr. SPRINGER. Actually, that is the very purpose for which we set up the Federal Trade Commission, that neither this Congress nor the Executive was to give the direction. We created that Commission. They are a legislatively created Commission of this body, but they are an independent body, supposedly acting in the public interest.

As I have watched the Federal Trade Commission in these past few years, I have had disagreements with them, but I never saw, at any time it was called to my attention, where they were not acting in the public interest as best their judgment dictated them to do.

But I don't believe it would be up to the President of the United States to give them any direction whatever. They are a creation of the Congress, but they are an independent body. To make an examination of the records that come to them and determine what ought to be done in the public interest is their function.

But what I would say is this: They don't have the authority to cover this particular problem which I assume the gentleman is testifying to today. If you are going into the question of advertising, that is a different thing, not before the committee.

But I would certainly say that I think the Commission has done its job in its field thus far, but it certainly doesn't have the authority to act on this problem which is under consideration today. That is the only difference I would have with my distinguished colleague from New York.

The CHAIRMAN. Are there any further comments or questions?

Mr. MACDONALD. I would like to comment to my distinguished colleague.

Is he aware of the great job that the FTC did during the cigarette advertising dispute? If you feel that they don't protect the consumer, I can tell you, and I know the rest of the members of this committee know it, that they were very active in trying to protect the health of the people of this country. So in that one instance obviously you are wrong.

Secondly, I would like to inquire as to the name of the case that you say dragged on for 30 years within the Federal Trade Commission.

Mr. ROSENTHAL. This is only one of dozens that I am searching out now during the summer period. That particular case was the *Holland Furnace Company* case.

The point that I might make, Mr. Macdonald, is the Federal Trade Commission surely sees their role in society as protection for the American consumer. The point is that until Congress mandates specific directions for them to act in areas such as this, they are neither equipped—I shouldn't say by desire—they are not equipped by mandate, staff, or even appropriations to act in these areas.

I think that this bill is really not a culmination of efforts on behalf of the American consumer. I would rather see it as a starting-off point.

The CHAIRMAN. Are there any further comments?

Mr. KORNEGAY?

Mr. KORNEGAY. I might say that while I have not always agreed with the position taken by the Federal Trade Commission, there have

been certain instances when matters appeared to be unfair trade practices have come to my attention from constituents.

I have referred those to the Federal Trade Commission. I don't know of any agency of the Federal Government that I would say had gotten into the picture and has done a better job than they have done. They have been very fair in the areas that I have had experience with them about.

Mr. SPRINGER. May I say to my distinguished colleague that we have a special subcommittee on investigations and if we come to the conclusion that the Federal Trade Commission is not doing its job, this committee has plenty of authority to act, and we have done that in some cases.

It is a herd-riding committee to see that commissions do act. If they don't, we investigate them.

The CHAIRMAN. Are there any further comments?

Mr. CUNNINGHAM. Mr. Rosenthal referred to the National Commission on Food Marketing. He and I served on that Commission for 18 months. It was made up of five Members of the House, five of the Senate, and five appointed by the President. We did find, during all of our hearings, many shortcomings of the Federal Trade Commission in fields where they have jurisdiction, where they were not doing, in our opinion, the job that they were supposed to do.

Isn't that right?

Mr. ROSENTHAL. That is precisely correct.

Mr. CUNNINGHAM. We have conducted hearings all over the country. In our report, which we presented to the President the 30th of June, a very voluminous report, you will find our criticisms of the Federal Trade Commission.

The CHAIRMAN. Mr. Farnsley?

Mr. FARNSLEY. I am not clear whether the Federal Trade Commission already has this jurisdiction and we are giving it to them again. I don't have a fear of redundancy. I don't see anything wrong with giving it to them twice.

Is there anything in this that limits their jurisdiction or takes it away from them?

Mr. ROSENTHAL. In the proposed bill passed by the Senate?

Mr. FARNSLEY. Yes.

Mr. ROSENTHAL. Not in my judgment.

Mr. FARNSLEY. Is there anything that increases it?

Mr. ROSENTHAL. I think it mandates the will of the American people via the congressional role.

It may be that under the heading of deceptive trade practices, deceptive advertising, they could have done this many years ago, but I don't think that they felt that Congress wished them to do that. We are opening a new page.

Mr. FARNSLEY. You think this says if we say scat, we mean scat? There is the old story about the man who had the big and little holes for the cats to get out of the barn, and he said, "When I say scat, I mean scat." Is that what you mean?

Mr. ROSENTHAL. I am not sure I understand the story.

Mr. FARNSLEY. I apologize. There were several holes for several size cats.

That is all.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Mr. Rosenthal, you mentioned that you wanted the Congress to specify what needs to be done in this area. What I am wondering about, is in the language of the bill which makes provision for promulgation of rules and regulations.

What will the rules and regulations be? They will have force and effect of law. Will they be fair? Is Congress in effect just handing over the right to make a decision without provisions for review? There is no opportunity for review.

Aren't we missing the mark a bit when you say you want the Congress to specify, yet by this broad authority for "promulgation of rules," we give you the right to specify.

Mr. ROSENTHAL. I don't consider it to be any inconsistency at all. Under section 4 of the bill Congress mandates certain things that cannot be done and certain things that should be done.

The more simpler things as to whether the size of packages are deceptive, these are the kinds of things we leave to the joint committee of the industry, the Secretary of HEW, the Food and Drug Administration, and the Federal Trade Commission. In other words, under the terms of this bill, Congress handles the more readily identifiable problems and the more easily legislated.

Then under section 5 of the bill it permits these additional regulations of the more complex or more sophisticated problems to be handled that way.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very kindly, Mr. Rosenthal, for your testimony before this committee.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to say if there was any question brought up about our faith in the Federal Trade Commission, I would say we all have faith in it, as we do in the other agencies downtown. We don't always agree, however. If the need ever arises, as Mr. Springer says, we shall use our oversight committee to look into any of the agencies under our discretion.

At this time we will be ready to begin the questioning. We will be under the 5-minute rule to save time.

Mr. NELSEN. Mr. Chairman, before we proceed, may I make a suggestion? I would like to have the opportunity, after the proponents have appeared, to ask questions of the people from downtown. Certainly there are things that will come up that we would like to review with the folks from downtown.

There are questions that we would like to ask later and I hope we will have the opportunity to do so, if it meets with the Chairman's approval.

The CHAIRMAN. I understand that all of them will be available.

Any time you have to leave, Mr. Secretary, you may depart.

Secretary CONNOR. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Mr. Chairman, under your 5-minute rule, that applies to one witness, generally. We have four witnesses here. Are you going to give 5 minutes of questioning to a witness?

The CHAIRMAN. I think we will give 5 minutes and then come back. Mr. Rogers of Texas.



Mr. ROGERS of Texas. Thank you, Mr. Chairman.

Mr. Secretary, I know that both you and the other distinguished members of the panel indicated your desire for the passage of S. 985 as it passed the Senate. Would you, for the purpose of the record, specify the difference between S. 985 and H.R. 15440?

**STATEMENTS OF HON. JOHN T. CONNOR, HON. PAUL RAND DIXON, HON. WILBUR J. COHEN, AND MRS. ESTHER PETERSON—Resumed**

Secretary CONNOR. Yes, sir, Congressman Rogers. I will address myself to the committee print of H.R. 15440, dated July 21, 1966, which contains some annotations. I understood that that was in front of the committee.

In any event, I will refer to the specific provisions.

Section 5(c)(5), on page 7 of this annotated version and on page 7 of the bill, et cetera, is the only substantive addition, as I understand it, which does not appear in the Senate bill. This would make the provisions of section 5(c) with respect to the promulgation of regulations applicable to sizes, shapes, or dimensional proportions of packages in addition to the other qualifications that appear before and after.

In section 5(c)(1), there is a paragraph at the end which reads "But this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity."

In our opinion, that provision that I have just read would have to be modified if section 5(c)(5) is adopted by this committee. But 5(c)(5) constitutes the only additional provision that does not appear in substance in the Senate bill.

Mr. ROGERS of Texas. You are saying that the Senate bill would grant authority to the Secretary and the Commission to determine the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity, and that the House bill does not? Would that be a correct statement?

Secretary CONNOR. No, sir; the Senate bill does not give any authority with respect to package sizes, shapes, or dimensional proportions, just in connection with weights, measures, and the other specified characteristics.

Mr. ROGERS of Texas. What I am getting at is that the Secretary or the Commission is not seeking authority by this legislation to determine the size or the shape of packages. Is that correct?

Secretary CONNOR. That is correct. The administration support is for the Senate bill as it stands.

Mr. ROGERS of Texas. Mr. Dixon, did I understand you to say that you felt that it would be better if the enforcement of this act was under one agency rather than dividing it between two?

Mr. DIXON. I said this to the Senate, and they had that information. But they passed the bill in its present form and we have endorsed it. I did wish to be consistent and point it out to this committee.

Historically, since the passage, certainly, of section 5, as amended, in 1938, where the words were added to the statute, "unfair or deceptive

act or practice," the Commission has been, in my opinion, considered legislatively as primarily responsible for advertising, as such, or advertising or representations that could be characterized as economic representations.

I think this bill is addressed primarily to economic representations, how you sell the product. As I would understand the delineation between the two agencies, although the statutes are broad enough and they do overlap, Food and Drug, through the departmental structure, has primary responsibility for the health and safety.

I merely pointed out that the expertise, if there be expertise in the staff, has been built up over the years in this specific area.

Mr. ROGERS of Texas. If my memory serves me correctly, wasn't Dean Landis, among many of his activities, commissioned by President Kennedy to make a report on the delays, the dilatory situations that developed in administrative actions and recommended that these matters ought to be confined, jurisdictionalwise, to one agency because otherwise there were delays occasioned when they were divided up?

Mr. DIXON. I believe he mentioned that. I spent a whole afternoon talking him out of that.

Mr. ROGERS of Texas. Let me just ask you one more question. With regard to the jurisdictional situation, is it your position at the present time that the Federal Trade Commission has jurisdiction only with regard to unfair and deceptive practices insofar as trade is concerned?

Mr. DIXON. This is correct. This is the basic statute.

Mr. ROGERS of Texas. What else does this bill do, Mr. Dixon? Where does it expand this?

Mr. DIXON. This bill, sir, is similar to the bill that the Congress passed, such as the Wool Products Labeling Act. We had that authority when you passed the Wool Products Labeling Act. But following the mandate of the Wool Products Labeling Act, once we issued and promulgated regulations, a violation of the act became a per se law violation of section 5.

This same pattern is followed here.

Mr. ROGERS of Texas. This is the pattern in this act?

Mr. DIXON. That is correct.

Mr. ROGERS of Texas. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, thank you.

I would like to ask each one of the witnesses this question, and, Mr. Secretary, we might as well begin with you.

Has there been any separate investigation or study as to what the enactment of this legislation would do on costs to the consumer?

Secretary CONNOR. Mr. Springer, no detailed study has been made of possible added cost to the consumer or possible added savings, aside from the type of testimony that has been volunteered and which has been put together by Mrs. Peterson and summarized in her testimony.

Mr. SPRINGER. I didn't understand from what Mrs. Peterson said that there was any study made.

Secretary CONNOR. I prefer for her to summarize that herself.

Mr. SPRINGER. I will ask her that question. Mrs. Peterson.

Mrs. PETERSON. Relative to the cost to the consumer, I did give you the data and the summary of a study that was made at Eastern Michigan University. A study was made there by having some college-

educated women shop under some prescribed patterns and instruction and then computing how much they could have saved had they made the correct purchasing decisions. We have had several spot surveys made to determine the ability and facility of the housewife to make the most economical purchases. However, the Eastern Michigan University study is the only study by a university or research group that has been made to measure scientifically the possible saving potential of buying decisions if made on the basis of understanding the best buy quantitatively.

Mr. SPRINGER. We are not talking about the same thing, Mrs. Peterson. I am talking about whether or not this 12-ounce package which sells for \$1 today will cost more or less if this bill is put into effect.

Mrs. PETERSON. I do not know of any studies made about that. It is almost impossible to calculate what additional costs might be incurred by the manufacturer given the safeguards in the bill until the procedures have taken place and what changes, if any, will be required on a commodity-line basis. But we do know this: there is today a tremendous cost to the consumer because of the proliferation of packagings in many weights and quantities.

These costs of proliferation, of course, are now being passed on to the consumer in the price he pays for his goods. I am informed that the changes in labels and packages occur frequently in some commodity lines.

Mr. SPRINGER. May I ask, Mr. Dixon, if you have any studies? That is, on this problem.

Mr. DIXON. We have no studies and I don't think it would ever be possible for you to create such a study unless you try to put a value upon what will inure to the consumer by not being deceived or confused. If you allege paying 9 cents, 2 cents, 3 cents, 5 cents more for a commodity, and this is generally found, what does this cost? I don't know how you evaluate.

What is the cost for burying caveat emptor. I say it is an informed, enlightened public.

Mr. SPRINGER. May I ask, Mr. Cohen, whether you have made any study of the impact of cost from the enactment of this bill?

Mr. COHEN. No; we have not, and I don't think it would be possible to make such a cost evaluation on specific commodities until you knew exactly what the regulations were. So while I think you could make a very generalized type of study, I don't think it would be possible to answer the question commodity by commodity.

Mr. SPRINGER. The thing that surprises me is that we have these distinguished witnesses who come here and seek the enactment of a bill which will affect every consumer in this country, and the very first thing that the consumer is going to ask is does this bill bring costs up per ounce or per pound, or will they reduced or will they be the same?

I am not saying anyone of those three. But the most amazing thing to me is that you bring here a far-reaching piece of legislation which will affect not only every consumer, but every retailer in this country, and I presume every manufacturer, without asking that substantial question of "Will this increase the cost per unit of production?"

I have run through the Senate hearings and I can't find a single word of testimony on this particular problem. It seems to me that if

there is one important question the consumer is going to ask me as a Congressman when I go home: Will this increase the cost per unit to me when I buy it from the store, whether it is in one package or another?

I have one more question, Mr. Dixon.

Mr. Dixon, it was my understanding that you indicated we should regulate market practices where neither unfairness or deception exists.

It was my impression that the bill was to prevent unfair and deceptive practices, or at least that is what it purports to do in the title. Is that your understanding of this, based on your testimony? I might have misunderstood you, but I wanted to be sure.

Secretary CONNOR. Mr. Chairman, if I may be excused, I will return tomorrow morning.

The CHAIRMAN. Certainly.

Mr. DIXON. This bill, as has been pointed out to the committee, would apply whenever it is necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity.

Mr. SPRINGER. Then this would cover that which is being retailed today fairly and under the law?

Mr. DIXON. It could be said, sir. We have a law today in the broadest type of language to proceed against unfair or deceptive acts or practices. This bill is addressing itself to deception.

On page 5 of S. 985, in the language of 5(c) you will find it there.

Mr. SPRINGER. Parallel with that, you used the word "quality" in your statement. Can you tell me how this would be assured under this bill?

Mr. DIXON. Quality?

Mr. SPRINGER. Yes, sir. You used the word "quality" in your statement.

Mr. DIXON. I would have to go back and pick it up.

Mr. SPRINGER. I think I marked it. At page 3:

The goal of S. 985, as we interpret it, is primarily to enable the supermarket shopper to make an intelligent choice of products from a cost savings and a quality standpoint.

Mr. DIXON. Maybe that was an ill-advised choice of words, sir.

Mr. SPRINGER. I didn't understand that part about quality under the bill. I thought maybe you knew something I didn't know.

Mr. DIXON. No, sir. I think it is an ill-advised word.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, I have listened to the four statements and each one was very good and to the point. The goal is wonderful.

I have been confronted by some manufacturers who said if they have to conform with this bill, it will cost from \$3 million up to \$10 million to reshape their mass production with new equipment to try to get equal size packages.

If it does run into that kind of money, it is only natural they will pass this cost on to consumers. Will that help the consumers, by making such restrictive regulations? I believe in putting the weight and sizes on each package, but if you are going to try to regulate what size of package, that is something else.

One example is soda crackers. They are much lighter than Nabisco crackers. If you make them each 1-pound packages, they will be

different size packages. Is that your thought in this bill, to make them all uniform packages?

Mrs. PETERSON. I think the important thing about this is that all we want and all the consumer wants is to be able to have the information on the package so that they can make these comparisons among competing products. There is no desire for any change that is unreasonable or any change where the consumer has facility already in making price comparisons and the information necessary to make a rational choice. The reason why it is extremely difficult to be specific about cost is that one does not know until after the fact what commodity lines will lend themselves to the voluntary program and even then what changes, if any, will be required. It is not feasible to make assumptions for changes relative to sizes without analyzing the factors involved in each commodity line and without knowing what the industry in joint consultations will recommend for its own industry. The legislation is certainly not intended to require that all commodities will have to be in a certain size package or that there will be any standardization of packaging. Before any change is made, there has to be a showing of need and nobody is going to ask for any kind of arbitration when there isn't a need.

The consumer loves the abundance of the marketplace and we like new packaging devices, interesting shapes and sizes and the variety of choice of today's market. But when we can't make price comparisons, then we will need some rationalization.

It will be in those areas where some new regulations may be necessary.

The point is that it is almost impossible to say what self-regulation will evolve from the voluntary program because first one has to go through all the prescribed procedures. The legislation requires that you take into account five safeguards—and these are safeguards for the benefit of both the consumer and the manufacturer. They include: costs to the consumer and costs of packaging, the availability of the commodity in a reasonable range of package sizes, the materials used for the packaging, the weights and measures customarily used, and the competition between containers. But further and most important to protecting industry from changes in weights and quantities where it uses a standard package for several commodities, the bill prevents regulations which would preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related commodities of varying densities (unless it is determined that the continued use of such package for such purpose is likely to deceive consumers), and other provisions to guard against increases in costs.

I think that the first step in assessing probably costs of this legislation is to weigh the limited changes which would result from the legislation against the costs to the consumer as a result of the proliferation of quantity sizes. When I discussed this with some manufacturers they suggested that we might look at how many changes there are now and then think about what reductions could take place. Possibly the savings from nonproliferation or a reasonable range of weights and quantities could be passed on to the consumer and we could still have a reasonable number of size designations so that we can have the sizes we need.

I think you should know how frequently there are already changes that are made. There are changes being made in the packaging constantly to meet competition or to create uneconomic competition based upon packaging rather than price and quality. Maybe where there is a heavy degree of proliferation certain ground rules and standardization will help and reduce the costs.

You can't estimate what these costs will be until you know what commodities will be subject to what regulations; and it could be reasonably expected that since if a change is required it will only occur once and since the change will be aimed at a reduction in the proliferation of weights and quantities, the regulations will require fewer weights and quantities in the range and therefore lower costs.

Mr. FRIEDEL. These people I have talked to are in favor of the bill, but they don't want their hands tied. They want a reasonable bill on weights and sizes.

Mr. DIXON. I would like to make one short comment at this point. You are addressing yourself to that part of the proposed bill which would be section 5(d). If either the Federal Trade Commission or the Food and Drug Administration, after some kind of administrative hearing and a finding of need, were to publish that in the Federal Register under this bill, if there is a single citizen that would be affected, he would be afforded the opportunity to request the voluntary standards procedure of the Commerce Department—one person, only one.

Then that machinery would come into play. Within the framework of 12 months or 18 months, and the framework of the group brought together under the guidance of the bill, they would promulgate, let us say, a sensible standard.

Then, if that standard is promulgated and it is violated, then it would come back to the agency, which, under the bill, is bound to do no more than accept that standard and promulgate it into an effective law. So if every Congress built in the safeguard they built in here, what you are driving industry toward here is voluntary compliance as I would understand it.

This is the first step. Before we walk, you are saying here, "Let us take a step."

Mr. FRIEDEL. Thank you.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I would like to ask a question of each one of you.

This is the first hearing I have had where the witnesses have come in recommending one bill. All of you are recommending the Senate bill as though we should take it without any examination or any witnesses.

I will start with you, Mrs. Peterson. Why do you do that? Are you fearful that the House might exercise its will?

Mrs. PETERSON. Not at all. I think we have given you our opinion because we know what work has been done. But the very fact that we are here testifying and wanting to answer questions I am sure indicates our willingness for you in your good judgment to make this bill what you think it should be. I think the point is that this is a good bill as it passed the Senate.

Speaking for the consumers, I want the very best bill possible. I think this is a very fine step toward that goal.

Mr. YOUNGER. Mr. Dixon?

Mr. DIXON. Mr. Congressman, I made mention in my statement that over a 2-year period I testified before the Senate Judiciary Committee. This bill didn't even come from the Judiciary Committee. It came from the Commerce Committee when it was re-introduced.

This is certainly no new and novel subject. They certainly re-hashed and considered many views. Even with respect to Congressman Staggers' bill, the chairman's bill, and even the deviation, if it is the will of this committee to add that to the bill, certainly my agency is not going to object to it because you are giving us the mandate.

What we are telling you is that with respect to that feature of the bill, I think under present law we could handle that phase of it. I don't think you need to start to go that far right now. We have to report to you from time to time. You would know how it is working.

Mr. YOUNGER. Mr. Cohen?

Mr. COHEN. My comment is exactly the same as Mr. Dixon's. While we favor the Senate-passed bill, we would support fully the additional provision that is in Mr. Staggers' bill, except as Mr. Dixon indicates, we think that he has the present authority to deal with that.

I think we would abide by whatever the will of the committee was on that, as to whether you wished to make it more explicit or not. But I would say that the Senate-passed bill, which is the product of so much work and so much thinking, is a good bill.

On the other hand, I must say I have never seen a bill in Congress that couldn't be changed or improved by working on it. So I know that is true.

If the committee in the hearings finds something that can be improved, I certainly would hope that you would consider it very carefully.

Mr. YOUNGER. Thank you.

Mr. DIXON. I have one question about the enforcement. Am I correct in understanding from you that if this bill were passed, it would no longer be necessary for the Government agency to have to prove that particular actions of packages were deceptive in order to impose all the penalties?

Mr. DIXON. Not quite. I think what this bill does is to set up a procedure and a modus operandi which we would have to follow. We would have to have hearings. We would have to make determinations in those hearings.

I might point out something else to you, that in this bill it says that the hearing we have to have is under section 7 of the Administrative Procedure Act. Do you know what section 7 does? It makes it an adversary proceeding.

It means it is adversary in the sense that parties there have the right to cross-examine and to bring witnesses. Either this agency or Food and Drug, if we decide that under the mandate of this bill we are going to have a hearing, you have provided a type of hearing that goes far beyond the regulatory rulemaking hearing.

You have provided in the Senate bill and in your bill that it shall be section 7 of the Administrative Procedure Act. This means a real rhubarb is what it means, in an adversary proceeding.

Mr. YOUNGER. You also made the statement, I think, in your testimony, that following a hearing of that kind the court would have no choice but to sustain your action.

Mr. DIXON. Would have no choice? If Congress passes this bill and based upon the record, following section 7 of the Administrative Procedure Act, and we make a finding of the need and deception, then you have provided how judicial review is to take place.

I say to you that judicial review would be as to whether we were arbitrary and capricious when we made the finding. There are safeguards on the judicial side in this bill.

Mr. YOUNGER. But the statement you made in previous testimony that now the court would have no choice but to sustain your action if this law is passed and the rules are ultimately promulgated, is it your opinion that the court would have no authority beyond that?

Mr. DIXON. Let us go back to the Wool Products Labeling Act. We had section 5 which said it was against the law to engage in an unfair or deceptive practice. But you passed another act, and the act was rather specific.

All of the instructions that we had in the act led us to believe that we could issue rules and regulations. Once they were issued under the authority of the act, they became violations of section 5 of the Federal Trade Commission Act. So when one violated the regulation, the rule, we would merely cite the violation and rest.

The case would be rested because already we had established the rule under the procedures of the Congress which could be reviewed.

Mr. YOUNGER. Thank you.

The CHAIRMAN. The time has run out.

Mr. SPRINGER. Mr. Chairman, we have the civil rights bill on the floor. I hope this will not be prolonged because all of us ought to be on the floor for that.

Mr. Macdonald.

Mr. MACDONALD. I will try to be as brief as I can.

There is one thing that bothers me about the bill, and Mr. Springer brought out part of it, is this: I have been through the bill and I don't see any place where you will get additional help, if the Congress says that FTC should be in charge of enforcing this bill.

I would think one of the first things you would do would be to make a request for some money for more help to enforce this rather far reaching bill.

I am for the bill. Don't misunderstand me.

Mr. DIXON. As I sat here and listened to Congressman Rosenthal, champing at the bit to answer him or disagree with him, I could turn here and say sure, we could do a much better job if Congress gives us more money.

But we go through this every year and every session. I accept the will of the Congress, and the way the Congress is set up and the way we work, we do the best job we can with the funds we are given.

If this law passes, sir, we will ask for more money. If you say to me "Why haven't you asked for it before"? I have asked for it before.



But as I say to you, this law, as I would understand it, has a bit of equity in it. It is an encouragement to say "Here is another tool, and adjunct, that you can use across the board on problems."

Right to this very day, we are having hearings on "cents off" on coffee under our present procedures. Under our present procedures, no matter how we proceed, it ultimately would come to a case by case. This procedure says "If you follow this same type of procedure, and you ultimately would promulgate something, once it is promulgated, then it is a per se law violation and that is the end."

Mr. MACDONALD. But my point is that the bill is now up and it may run into some opposition by people saying it is just another way for more bureaucrats to be put on the Federal payroll. I have heard that so many hundreds of times. Don't you think it is better to face up to that fact, that you might run into that sort of opposition, to start out with?

Mr. DIXON. I don't think we will ask for over \$250,000. I have been asked for that. But this is not a large amount of money to try to do this kind of a job in these areas. It is a rather small amount.

Mr. MACDONALD. My last question, because all of us on the committee, I am sure, have heard from manufacturers and other interested people. One of the things they point out is that they wonder why the previous legislation in 1938, the Federal Food and Drug Consumer Act, doesn't give you all the power you need to do whatever one says needs to be done.

Frankly, I haven't been able to answer. Could you answer them for me?

Mr. DIXON. I will try, sir. I came to the Federal Trade Commission in 1938 just as this act was passed. I have, of necessity, had to review the legislative history many times. There was a great argument in the Congress at that time to center all this in one place or another.

But the Congress made a decision there, in my opinion, to have what we ended up with. They amended section 5 of the Federal Trade Commission Act, and they added sections 12, 13, 14, and 15 to the act, and they strengthened, I believe, Food and Drug at the same time.

In the broadest type of language, let it be said that maybe Congress had in mind for a certainty that the Federal Trade Commission was to move against deception.

We have been moving against deception. But as Mrs. Peterson has said many times very eloquently, and I have tried to say it myself on occasions, there have been changes since 1938 in the way the consumer buys products.

Today the consumer buys them by sight. Shelf space is important.

Mr. MACDONALD. Without going into all that, which we all agree to, and which is so obvious, if you have the power, why do we have to give you the power all over again?

Mr. DIXON. Maybe I am going too tediously for you, too slowly. But you gave us the power and certainly, there is no doubt to move case by case. There may be potentially several thousand cases confronting us today. I have put out investigators, as this legislation has been pending, to determine just where we would be if we could

really do the job. I have agreed that we could do a better job if you pass this legislation than trying cases one at a time.

Let us take detergents. You know there are many people who make and manufacture detergents, and they have "giant," "family," and so forth. They will use the connotation of so many pounds and ounces to where even some college graduates who are not quite good on fractions or they don't remember how many ounces are in a pound, so that they can't make comparisons.

Suppose we picked one and sued them, and we brought in the people that are brought in under these bills, and a record was made where you could very clearly make a finding that there was deception inherently in this, and then we would say, "You shall cease and desist from marketing the way you are."

We would still have won, but what about the rest of the people. Do you think about the lawyers that we oppose—Mr. Rosenthal says we drag our feet. You should come down and see some of the lawyers that my men have to face. I would like to have him down there sometime and see how well we do.

But I say to you frankly, sir, that if we chose one we would have a case; we would have one scalp, let somebody say. But what about the other people? The first thing that the party we proceed against would say is "Why did you pick me? Who told on me? How did I get elected? Why don't you pick the others?"

The CHAIRMAN. The committee will have to recess until tomorrow morning at 10 o'clock.

Would you all please return at that time?

(Whereupon, at 12:10 p.m., the committee recessed, to reconvene the following day at 10 a.m.)

## FAIR PACKAGING AND LABELING

---

WEDNESDAY, JULY 27, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The committee, when it recessed yesterday, was in the process of questioning the panel. At this time I would like to ask the indulgence of the members of the panel. A Member of Congress who has another committee meeting that he must go to has asked to appear briefly and present his statement.

If it is all right with the panel, we will ask Congressman Howard of New Jersey if he will come forward.

You may proceed, Congressman Howard.

### STATEMENT OF HON. JAMES J. HOWARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. HOWARD. Thank you very much, Mr. Chairman.

I appreciate being afforded the opportunity to testify this morning in behalf of this much needed legislation for the housewives of America.

I am sure that this committee will, in its deliberations, come out with a fine bill. I am looking forward to its passage during this session.

The problem of truth in packaging first came to my attention during the last year, as I imagine many Americans were made aware of this, through the complaints of their wives. My wife had been shopping for many, many years trying to stretch a schoolteacher's somewhat meager salary, and met with constant frustration in the supermarkets of America, not that she was being cheated due to untruthfulness, but very often the mental and mathematical gymnastics that she had to go through to try to find the best bargain were a bit too much for her.

This was compounded by the fact that very often our housewives are on a rush trip to the supermarket with their young children pulling at their skirts, throwing boxes of cookies, and so forth, into the basket while their backs are turned.

The plight of the housewife is certainly a difficult one. I went to the supermarket to try to check out some of these complaints, and was overwhelmed with the amount of frustration involved in trying to shop in the supermarkets today. I saw such things as a major coffee

company selling 1-pound, 2-pound, and 3-pound cans of coffee. The 1-pound and the 3-pound cans were listed as having a "cents-off" sale. In eliminating the "cents-off" and trying to determine the proper or original or regular cost of the coffee, I found that the housewife would pay more per pound for the coffee in buying the 3-pound can than the 2-pound can.

I feel this is not in the spirit of salesmanship nor fairplay.

An instant-coffee company had a 10-ounce jar which had 15 cents off on the label which came from the manufacturer. About half of the jars were labeled this way. The other half were labeled 20 cents off, the same brand, the same amount. The "cents-off" sale had a 5-cent differential, 15 and 20. In looking at the cost, one sold for \$1.27 and the other sold for \$1.38, an 11-cent difference in the cost, which should have been a 5-cent difference.

Alongside of that, to compound the confusion, they had a 12-ounce jar listed as "12-ounces for the price of 10." So the housewife could be very easily confused. She could have bought of the same brand, 10 ounces for \$1.27, 10 ounces for \$1.38, or 12 ounces for \$1.27.

The growing importance of the individual as a consumer is an inevitable result of the industrial system, especially the American development of mass production.

However, extensive hearings on packaging and labeling, with particular reference to foods and household supplies, have brought to light flagrant abuses of good business practices. Therefore consumer protection legislation is urgently needed. Let me outline the three main reasons why such legislation is needed without delay.

First, the need has arisen out of the role of the package as salesman in today's food market. Regrettably, many abuses have crept into packaging techniques, confusing the consumer.

As Senator Hart explained, "the need is for sufficient information presented in such a way that will allow and encourage the shopper to make rational price comparisons among competing products."

However, it is very difficult to make reasonable choices based on quality, quantity, and price, in view of the many different sizes and shapes of packages, cans, and bottles of food products and other merchandise.

How can the housewife make rational price comparisons on price-per-unit basis when faced by odd-ounce packaging? As Marya Mannes, the writer and critic, says, "you need a computer or a slide rule when you go marketing."

Further, the use of deceptive sizes, shapes, and proportions frequently exaggerates the quantity inside. For example, an irate consumer wrote to Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs:

I recently bought a pre-packaged pizza and I was horrified—why this pizza is only 13¼ ounces and it's in a box that would fit a 17 or 18 ounce pizza—I feel gyped \* \* \*.

The use of descriptive adjectives, such as "jumbo" quart, "giant" size, and so forth, are also deceptive. As Mrs. E. A. S. of Ceres, Calif., wrote in a complaint to Mrs. Peterson, concerning a certain oil:

\* \* \* The smallest bottle they sell is called large. I still can't remember which is bigger, super, giant, or king. I say a giant is bigger than a king but my husband uses the theory that a king rules the land and is therefore bigger.

"Cents-off" promotions are also questionable. To quote Mr. Paul Rand Dixon, Chairman of the Federal Trade Commission, "Cents-off is a troublesome thing. Cents off what? Who puts what the price is on a product in the store?"

Another disturbing practice is the use of labels with very fine print, and obscure location of information.

Then, advertisements of servings are frequently misleading. For instance, an elderly wife from Pennsylvania wrote to Mrs. Peterson:

I am enclosing a bag that contained instant sweet potatoes. The product is very good but the label distinctly says that the package serves four generously. I have bought this product several times but it never serves more than two of us. (My husband and myself). Since we are both 70 and are not possessed of an excessive appetite, I feel we are being cheated.

Finally, slack fill is a common complaint of consumers. This occurs especially in the cereal products industry. All too often, at least a third of a package of cereal is nothing but air. Don't tell me that such products need to "settle" that much.

Second, questionable packaging techniques result in actual dishonesty. On the one hand, the consumer is cheated and on the other, the ethical businessmen is penalized.

Senator Hart claims that fair packaging legislation would save the average family of consumers about \$250 a year. And as Mr. George P. Larrick, Commissioner of Food and Drugs testified last year:

Most businessmen earnestly endeavor to label and package their product ethically and legally. But hearings \* \* \* have shown that a minority indulge in dishonest and undesirable practices and that this forces the honest competitors to adopt such practices to remain in business.

Third, present laws, the Food, Drug, and Cosmetic Act and the Federal Trade Commission Act are inadequate to deal with dishonest and misleading packaging practices. President Johnson himself stated:

The case-by-case trail, which is the procedure under the generalized language of present laws is a long and winding one. More clear-cut regulations are needed.

George P. Larrick explains the existing muddle in regulation of packaging as follows:

We have faced great practical difficulty in enforcing the requirements of the Federal Food, Drug and Cosmetic Act with respect to conspicuousness of labeling and with respect to deceptive packaging.

Where there is no well-established practice in the industry, most courts have looked with a skeptical eye upon our attempts to bring about correction of practices which we have thought involved economic deception.

We have lost every contested action involving deceptive packaging of food. We believe that the fair packaging and labeling bill is an improved approach in that it makes unnecessary the ineffective case-by-case approach we have had to take under the Food, Drug and Cosmetic Act.

Under suggested legislation the Secretary will be able to promulgate industry-wide binding regulations, thus bringing about improved packaging of foods, drugs, and cosmetics.

Perhaps the most cogent argument in favor of new legislation is this: If present laws were adequate, abuses in the packaging field would be "few and far between."

My bill H.R. 12043, like Senator Hart's earlier bill would authorize the issuance of regulations which would:

1. Require the net quantity of contents to be stated on either the front panel of packages or labels affixed thereto;
  2. Establish minimum standards with respect to the prominence of net quantity statements;
  3. Prohibit the addition to such statements of qualifying words;
  4. Specify exceptions to the foregoing which may be required because of the nature of the particular commodity;
  5. Prohibit the placement upon such packages by persons other than retailers of data relating to possible retail price savings through the purchase of the commodity;
  6. Prevent the use of deceptive illustrative matter on packages.
- The bill would authorize the Secretary of Health, Education, and Welfare and the Federal Trade Commission to promulgate regulations, and additional regulations as needed, to preserve fair competition among competing products by enabling consumers to make rational comparisons and to prevent deception.

Such regulations would:

1. Establish reasonable weights or quantities in which the commodity would be distributed for retail sale, provided that no weight established is less than 2 ounces;
2. Prevent distribution of packages likely to deceive retail purchasers as to net quantity with exceptions for certain packages of distinctive appearance;
3. Establish standards relating to package size which may be used to characterize quantitatively the contents of packages;
4. Define the net quantity of a commodity which constitutes a serving if such commodity bears a representation as to the number of servings contained;
5. Define standards for the quantitative designation of package contents if such cannot be described in terms of weight, measure, or count;
6. Require the ingredients and composition of commodities to be placed in a prominent position.

Jurisdiction over food, drugs, and cosmetics would be assigned to the Food and Drug Administration of the U.S. Department of Health, Education, and Welfare, while all other consumer commodities would be under the authority of the Federal Trade Commission.

There is, of course, a vociferous opposition to fair packaging legislation. The opponents say that such a measure would result in product standardization and regimentation, which would lessen competition.

Furthermore, if the suggested legislation were enacted, they claim that consumers would be deprived of new and better products.

They believe that costs to the consumer would rise; and the economy would become sluggish with economic harm to both industry and labor.

It seems to me that these objections to packaging legislation are refuted by the following, forthright statement of Evelyn Dubrow, of the AFL-CIO:

We see no validity in the dire predictions of some opponents of this bill to the effect that it will stifle ingenuity and innovation in packaging techniques; increase costs to the consumers; reduce sales; curtail production; cause unem-

ployment \* \* \*. The very extravagance of these protests exposes their absurdity.

We cannot believe that bamboozling the consumer is the only way in which free competitive enterprise, job security for workers, and a prosperous economy can be maintained. On the contrary, this bill is designed to stimulate honest competition on the basis of quality and price, and to increase the consumer's real purchasing power by enabling him to make rational choices more easily. And there is nothing in this bill that says that packages may not be as attractive, convenient, and distinctive as imagination can make them. Is the faculty of imagination so poor that it can operate only in the realm of deception and confusion?

Finally, of course, opponents of fair packaging legislation argue that only more vigorous enforcement of present laws is necessary.

However, as the following testimony from the AFL-CIO explains, there are strong grounds for believing this is not enough. To quote:

We think there ought to be general regulations (ground rules) under which the Administrator can act—there ought not to be a need to go into court and take a long time to get a decision, because by that time the consumer has already been deceived or bilked or used unfairly.

I believe that in any consideration of the need for new packaging legislation the "ayes" have it. I believe that the evidence rendered in the hearing on truth in packaging unequivocally points to the necessity for additional measures to deal with present-day abuses of packaging practices.

At this point, I want to introduce into the record excerpts from letters I have received from housewives all over New Jersey in support of this legislation.

*Mr. D. K., Lavallette*

\* \* \* You need a college education to find out what contains how much. Ask your wife if she would \* \* \* go to the fresh fish department and buy some frozen fish by the pound. Let it thaw and see how much water she has paid for. This week I have  $\frac{3}{4}$  of a quart of water with two pounds of fish, when I thawed it out.

*Mrs. J. O., Long Branch*

\* \* \* I hope you succeed in your good effort \* \* \* I called the Better Business Bureau (to complain) \* \* \* they said, they could do nothing about it.

*Mrs. R. F., Manasquan*

(A) cold water liquid soap was marked 77¢. That seemed high \* \* \* today the (liquid) had marked across the front "10¢ off." The price marked on top was 75¢. To end my little tale, I checked the bottle in my trash that had been purchased approximately one month ago, it was marked 65¢.

*A Women's Club, Paramus*

\* \* \* We have over and over again encountered the misleading practices you would like stopped.

*Mrs. W. G. F., New Monmouth*

There are so many things that are falsely advertised. Some things come in such big boxes and cans and no value in it. I do hope as one of America's millions I will one day be able to go shopping and get my dollars worth and not have to come home \* \* \* wondering whether I was gyped or not.

*Mrs. J. C. S., Princeton* (copy of a letter sent to a leading hair lighter product)

Today I bought a package of this product for \$1.00. I read all the data on the box. I *always* read everything on the cartons. I am one of a growing group of consumers who are sick and tired of being victimized by business. There are too many industrialists masquerading as fine, upstanding citizens who are, in

fact, charlatans. Now, absolutely nowhere on this hair lightener box does it tell the consumer that this product has to be mixed with that old standby, Peroxide. It is now 10:30 o'clock on a Saturday night, and I don't have any of that in my house. What would you suggest I do in order to be a blonde by 7 a.m. tomorrow? I will tell you one thing I am not going to do. That is, ever buy or use (your) product again.

*Mrs. B. G., Toms River*

\* \* \* I've also had some terrible experience finding fat turned under a piece of meat or a large bone that you cannot see under.

*Senior Citizen's Club, Jersey City*

\* \* \* We want value received for every cent of money we spend. We feel sure the housewives of America will agree with us.

*Mrs. J. L., East Keansburg*

I do a slow burn everytime I shop. It is almost impossible to make a comparison of prices today, and I waste more time standing over an item, trying to figure out the "per ounce" cost of a package weighing a nonsensical 11¼ oz. as compared with a "giant" size 3 lb. 2 oz. box. It is a deliberate system by the Food Industry of confusing the consumer. \* \* \* Your bill, if passed, will be a godsend to the consumer.

*Mrs. J. Mc., Convent, N.J.*

An intelligent shopper must be able to compare in order to spend wisely and a good product at a reasonable price will sell if it is sold in 4, 8, 12 or 16 ounce sizes \* \* \*.

*Mrs. C. W. S., Bound Brook*

My special "gripe" is the way cereal manufacturers fill their boxes only to about ¾ capacity. Regardless of proper weight, it is disgusting to fool us into thinking we are getting so much more than we really do. I don't "buy" the idea that there is all that shrinkage in already dried-out cereal. This goes for cookies, crackers, etc., too.

*Mr. W. V., Princeton*

I thought you might be interested in this slide rule I made for my wife to solve the "Economy Size" package problem. If you think it would be useful to you or other women in their shopping struggles, I'd be glad to arrange to get you a supply.

I believe these are just a few of the things that stress and show the need for fair packaging and labeling. I am sure that many Members of Congress have received letters from their constituents urging them to help.

I believe, Mr. Chairman, that in their wisdom this fine committee will come out with a bill that we can all support which will help the housewife, give her an even break, and relieve Congressmen no end by eliminating frustrating problems such as this.

Thank you very much for affording me this time this morning. I look forward to supporting vigorously the fine bill that I know this able committee will present to the House.

Thank you.

The CHAIRMAN. Congressman Howard, I would like to compliment you for taking the time off from your committee and coming over here to give us the benefit of your views. I am sure the housewives of America will thank you, too.

I was glad to hear you say that you had finally gone to the super-market once. I have to go every so often myself, and I get into this confusion. I do it when I get home, so I can be with my wife.

Mr. HOWARD. I go as seldom as possible, Mr. Chairman.



The CHAIRMAN. Thank you very much.

Are there any questions that anyone would like to ask the Congressman?

If not, thank you again for taking the time to come and giving us the benefit of your views.

We will now hear from our colleague from Wisconsin, the Honorable Lynn Stalbaum.

**STATEMENT OF HON. LYNN E. STALBAUM, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. STALBAUM. Mr. Chairman, as Members of Congress, we are keenly aware of the throngs of organizations into which the American people have banded to protect and promote particular spheres of interest. Yet every one of us and every one of our constituents has no such guardian angel diligently watching over our interests as consumers. The Congress must fill this vacuum or shirk its obligation as the "people's advocate."

My experience as a consumer has convinced me that it is next to impossible to make a sound judgment of the "best buy" from an array of packages in myriad sizes, shapes, and weights. Accordingly, I introduced a Consumer Protection Act which includes a truth-in-packaging section. The interest and enthusiasm that greeted this measure indicates that families from all parts of the Nation are being victimized by the use of optical illusion and the abuse of poetic license.

As the first step in halting this outrageous exploitation of the consumer, I urge the committee to approve an effective truth-in-packaging bill.

Opponents of this legislation argue that existing law affords sufficient protection to the consumer. It is true that there is ample authority for prosecuting flagrant dishonesty in merchandising. However, the case-for-case basis on which it must be enforced severely limits the number of complaints that can be adjudicated.

Furthermore, there is a vast and legally uncharted gray area between outright fraud and legitimate advertisting. That area grows larger and murkier as new products pour into the market and their manufacturers draw on the outer limits of imagination to compete for the shopper's attention, and money. Too often this desperate search for a compellingly seductive sales pitch yields empty promises, on a half-empty package.

Some exhortations earnestly enlist opposition to the bill on the grounds that it would "kill creativity." This is an absurd allegation. Creativity can flourish within the bounds of truth.

Mr. Chairman, previous testimony has spelled out the shoddy sales strategies which nibble away at our shrinking dollar. These practices are provoking a swelling national indignation and cynicism that will not reform the unprincipled minority but will ultimately injure the ethical majority. Passage of truth-in-packaging legislation would protect not only the consumer but also the manufacturers who honor and depend on his confidence in their products. I urge this committee to provide that protection.

However, a truth-in-packaging law is only one broom to clean a house of many rooms. Legislation is urgently needed to sweep out

other areas which also directly menace the consumer's health, welfare, and pocketbook. I respectfully request the committee to consider the possibility of coordinating legislation on these fronts rather than dealing with them piecemeal.

The advantages of such a comprehensive approach motivated my introduction of the Consumer Protection Act. In addition to its truth-in-packaging section, the act requires disclosure of the true cost of credit and amends the Food, Drug, and Cosmetic Act to improve the safety of drugs, cosmetics, and toys.

These objectives deserve equal priority. In our society, the individual deserves top priority. It is high time that his welfare is courted as fervently as his dollar.

It is therefore my hope that your committee would see fit to recommend for passage a bill which is not limited only to truth in packaging but rather one which covers all areas of consumer protection now under consideration.

The CHAIRMAN. Thank you for your views Mr. Stalbaum. If there are no questions we shall continue by hearing another colleague from Wisconsin, the Honorable Robert Kastenmeier.

#### STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KASTENMEIER. Mr. Chairman, with your permission and indulgence, I would like to open my statement with a brief quotation from A. A. Milne's inimitable Bear of Little Brain, "Winnie the Pooh":

What shall we do about poor little Tigger?  
If he never eats nothing he'll never get bigger.  
He doesn't like honey and haycorns and thistles  
Because of the taste and because of the bristles.  
And all the good things which an animal likes  
Have the wrong sort of swallow or too many spikes.

"He's quite big enough anyhow," said Piglet.

"He isn't *really* very big."

"Well, he seems so."

Pooh was thoughtful when he heard this, and then he murmured to himself: "But whatever his weight in pounds, shillings and ounces, He always seems bigger because of his bounces."

"And that's the whole poem," he said. "Do you like it, Piglet?"

"All except the shillings," said Piglet. "I don't think they ought to be there."

"They wanted to come in after the pounds," explained Pooh, "so I let them. It is the best way to write poetry, letting things come."

"Oh, I didn't know," said Piglet.

Mr. Chairman, "letting things come" because they want to come in may be the best way to write poetry, but it is not necessarily the best way to market consumer goods. Yet the testimony of many witnesses before this committee implies that that should be the rationale governing, for instance, the size of soap packages. "If the 13 $\frac{3}{8}$  and the 9 $\frac{7}{8}$  ounces want to come, let them come in," these people seem to say, "It's the best way to sell soap." Even if it is the best way to sell soap, it is certainly not the best way to buy soap. The same may be said of another underlying assumption of the packagers—the assumption that whatever its weight in pounds, shillings, and ounces (or even in just

pounds and ounces), you should always make it seem bigger by adding in a few bounces—or air spaces, or irrelevant “serving” designations. Again I say, this is not the best way to buy a product even if it may be the best way to sell it.

The fact that it is not the best way to buy a product is in itself sufficient rationale for passing truth-in-packaging legislation. The rights of the consumer deserve a little more attention than marketing corporations are prone to give them. Certainly the consumer has a right to be able to make rational price comparisons, and I submit that when a choice has to be made between two 14 $\frac{3}{8}$  ounce packages for 79 cents, or one 1 pound 7 $\frac{1}{8}$  ounce package for 59 cents, or one 1 pound 10 $\frac{7}{8}$  ounce package for 69 cents—even without the shillings—that right is being abused. I submit that when one company’s “serving” is reduced to 87 percent of another company’s “serving,” that right is being abused; that when 25 percent of a box of mint candies is air space, that right is being abused. And finally, I submit that it is the responsibility of Congress to take a giant step forward in consumer protection by insuring through passage of truth-in-packaging legislation, that due attention is given to the rights of the consumer which have been abused.

It would be repetitious, however, for me to provide you with more examples of the numerous packaging and labeling practices which mislead the American consumer. I am sure this committee has heard them explained in great detail—if not by witnesses at these hearings, then perhaps by your irate wives. If neither of these is the case, there are seven volumes of hearings by committees in the other body to which reference can easily be made. Even the brief examples I have given, however, make it clear that just letting things come in because they want to falls short of an ideal situation for the buyer.

But opponents of truth-in-packaging legislation disagree, arguing that in attempting to improve on the existing system, in attempting to make the choices clear to the buyer, we would succeed only in destroying the competition which produces those choices. They acclaim the range of products and packages and tell us we must ignore the impossibility of rationally choosing among them. You can’t have one without the other, they claim. Thus, they conclude, just letting things come in is, in fact, the best way to buy.

For similar reasons, the opponents claim that the present chaotic system is not only the best way to sell, but the only way. Truth-in-packaging, they prophesy would so deaden the creative processes, that is, just letting things come, which produces the wide range of choice, that the whole system would be ground to a halt.

It is this aspect of the problem that I wish to concentrate on. Rather than presenting another list of malpractices, I would like to approach this legislation from a positive point of view. And in doing so, I think I can answer those who say that “letting things come” is the only way to operate an economy.

I would like to quote briefly several comments on the proposed truth-in-packaging bill by Mr. D. Beryl Maneschewitz, chairman of the board of the B. Maneschewitz Co., presented on behalf of the National Association of Manufacturers at the hearings of the Senate Commerce Committee. These criticisms are typical of comments by opponents of the truth-in-packaging legislation.

Mr. Manischewitz said:

The buyer's most reliable assurance of maximum freedom of choice, and highest quantity and quality of goods at lowest prices, flows from sustained competition between production and distribution of the various forms of goods.

Such drastic intervention in economic processes would have a chilling effect on the present dynamic factors which are benefiting consumers.

New materials for containers and packages, and new sizes and shapes are constantly being innovated to promote convenience, health, safety, and cost-saving for the consumer.

Standardized packages can lead to standardized products and standardized quality, and thereby limit the range of choice of the purchasing public. Under such conditions, marketing innovation and competition as well cannot help but suffer.

It is impossible to imagine any more deadening influence on the dynamic forces of innovation and competition which have served American consumers so well.

His criticisms can be fairly paraphrased as follows: First, he contends the convenience, health, safety, and low cost of products on the American market are due to competition, differentiation, and innovation, in both product content and product packaging. And, secondly, he argues the legislation we are considering would have a "deadening influence" on these three factors, thereby not only limiting the freedom of choice of the consumer, but also increasing his costs, impairing his health and safety, and decreasing his general convenience.

Mr. Chairman, I challenge the accuracy of each of these contentions. We have been treated to a great deal of rhetoric about the virtues of the free-enterprise system, and about the threat that this legislation poses to those virtues. I submit, however, that very few facts have been produced to support this rhetoric.

I would like to discuss with you a few facts which cast doubt on the extent to which these dire consequences will actually occur.

In looking through those seven volumes of hearings that have already been held in the Senate, I was struck by the fact that no witness ever used the dairy industry or dairy products as an example of any of these nefarious practices which the committee has been considering. I comment parenthetically at this point that when I use the terms dairy and related products, I am including oleomargarine, which, despite its other vices also complies with the excellent example that real Wisconsin butter has set it in regard to packaging. The industry is strictly regulated, particularly at the State level so that, in effect, it is already covered by truth-in-packaging legislation. Because of this, consumers are adequately protected, these malpractices do not occur, and the problem of price comparison simply does not exist.

Yet, absolutely none of the predicted dire consequences have materialized. The industry itself is still in business, competition is healthy, differentiation is rampant, and innovation continues both in product content and in packaging.

Most regulation of dairy products occurs at the State level. Although there are some differences from State to State, most States base their laws on a series of model State regulations adopted by the National Conference on Weights and Measures. It is sponsored by the National Bureau of Standards in partial implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection." I would like to submit these rules and regulations for your consideration.

(The material referred to follows:)

#### RULES AND REGULATIONS

NATIONAL BUREAU OF STANDARDS—HANDBOOK 44, 3RD EDITION, 1965, SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES

##### *Liquid measures*

**8.1. Units.**—The capacity of a liquid measure shall be 1 gill,  $\frac{1}{2}$  liquid pint, 1 liquid quart,  $\frac{1}{2}$  gallon, 1 gallon,  $1\frac{1}{4}$  gallons, or a multiple of 1 gallon, and the measure shall not be subdivided. However, 3-pint and 5-pint brick molds and  $2\frac{1}{2}$  gallon (10 quart) cans shall be permitted when used exclusively for ice cream.

##### *Milk bottles*

**4.1.**—This code applies to any container that is used for the measurement and delivery of milk and other fluid dairy products at retail.

**8.1. Units.**—The capacity of a milk bottle shall be 1 gill,  $\frac{1}{2}$  liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart,  $\frac{1}{2}$  gallon, 1 gallon or 2 gallons.

**8.1. Marking requirements.**—A milk bottle shall be permanently marked with a statement of its capacity. The capacity statement shall not be on the bottom of the bottle.

NATIONAL BUREAU OF STANDARDS—MODEL STATE LAW ON WEIGHTS AND MEASURES, FORM 2

**Sec. 26. Method of sale of commodities: Packages: Declarations of quantity and origin: Variations: Exemptions.**—Except as otherwise provided in this Act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the cases of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor: Provided, that in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used: And provided further, that under clause (2) the director shall, by regulation, establish (a) reasonable variation to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

**Sec. 27. Same: Declarations of unit price on random packages.**—In addition to the declarations required by Section 26 of this Act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

**Sec. 28. Same: Misleading packages.**—No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity or the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the director.

**Sec. 29. Same: Advertising packages for sale.**—Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents

of the package as is required by law or regulation to appear on the package: Provided, that in connection with the declaration required under this section there shall be declared neither the qualifying term "when packed" nor any other word of similar import, nor any term qualifying a unity of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

*Sec. 33. Bread.*—Each loaf of bread and each unit of a twin or multiple loaf of bread, made or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh  $\frac{1}{2}$  pound, 1 pound,  $1\frac{1}{2}$  pounds, or a multiple of 1 pound, avoirdupois weight, within reasonable variations or tolerances that shall be promulgated by regulation by the director.

*Sec. 34. Butter, oleomargarine, and margarine.*—Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of  $\frac{1}{4}$  pound,  $\frac{1}{2}$  pound, 1 pound, or multiples of 1 pound, avoirdupois weight.

*Sec. 35. Fluid dairy products.*—All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be packaged for retail sale only in units of 1 gill,  $\frac{1}{2}$  liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart,  $\frac{1}{2}$  gallon, 1 gallon, or multiples of 1 gallon: Provided, that packages in units of less than 1 gill shall be permitted.

NATIONAL BUREAU OF STANDARDS—MODEL STATE REGULATION PERTAINING TO PACKAGES: EXEMPTIONS, MARKING REQUIREMENTS, VARIATIONS

2. *Declaration of identity.*—The declaration of identity shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like, unless the commodity may easily be identified through the wrapper or contained.

3. *Declaration of quantity.*

3.1. *Net quantity.*—The declaration of quantity shall disclose the net quantity of the commodity—that is, the quantity of commodity in the package exclusive of wrappers and any other material packed with such commodity.

3.2. *Qualification of declaration prohibited.*—In no case shall a declaration of quantity be qualified by the addition of the words "when packed" or any words of similar import, nor shall any unit of weight, measure or count be qualified by any term (such as "jumbo," "giant," "full," or the like) that tends to exaggerate the amount of commodity.

6. *Prominence and placement.*

6.1. *General.*—All information required to appear on a package shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers in contrast to color of background. The declaration of identity, if required, and the net quantity statement shall appear on the principal display panel of the package. The name and address of the manufacturer, packer, or distributor shall appear either on the principal display panel or an any other appropriate pane. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

Mr. KASTENMEIER. In addition there are a few Federal regulations and a considerable amount of self-regulation by the industry itself. This latter is particularly important in States which have not adopted all the relevant sections of the model code.

Thus, by a combination of State and Federal regulations, and voluntarily observed standards, the practices which truth-in-packaging legislation is designed to insure already exist in most of the dairy industry. No one has ever tried selling  $15\frac{1}{2}$  fluid ounces of milk. There are several different kinds of milk, all selling for slightly different prices, but the consumer does not have to worry about finding herself with skim milk when she wanted vitamin A or D supplemented milk, because these facts are clearly marked on the most conspicuous part of the container.

When my wife buys butter, the same is true: with the exception of some sold in 2-pound "bulk," all butter is sold in 1-pound packages.

If she wants to buy only one-fourth pound at a time, that is possible, too, but the price comparison is no more difficult than if she were buying the entire pound.

The same situation is also true in the packaging of oleomargarine. Even the introduction of the new whipped margarine has not changed this fact. Because it is considerably lighter, the new packages are half as large as the old ones, in order to maintain the 1-pound weight. There are six "quarters" instead of four. Think of the confusion that would have been caused if the companies producing lighter margarine, in order to avoid the horrendous expense of converting to a larger package, had simply put four  $\frac{1}{4}$ -pound "quarters" into an old box and, quite probably, not changed the price. It would then be necessary to compare 1 pound with two-thirds pound. As it is, however, the 1-pound unit of comparison remains universal.

The introduction of the new type of margarine is only one major example of the innovation which has continued to occur, despite all the predictions to the contrary. Other examples include the liquid non-fat milk, the new "Danish" margarine, and vanilla (or some other) flavored ice cream, which is neither ice milk, sherbet, nor real ice cream. The fact that packaging standards exist means only that the consumer is able to compare the cost of the new product—the innovation—with the cost of the old.

Innovation in product content often leads to innovation in packaging, and since I have indicated that product innovation still does occur, we can expect to find packaging innovation. Again, soft margarine is a case in point. Some of it is sold in 1-pound packages containing two  $\frac{1}{2}$ -pound pound trays. It is perhaps not unreasonable to predict that this device may soon be tried by some of the "hard" margarine sellers. A few years ago, cardboard milk cartons were introduced. This particular innovation for the convenience—remember that convenience was one of the results of competition and innovation which Mr. Manischewitz pointed to—for the convenience of both producer and consumer proved so popular that cardboard cartons have almost completely replaced glass bottles. And this happened, let me remind you, despite the existence on the books of regulations requiring those cartons to be of certain sizes, to declare the address of the producer, to declare conspicuously the type of milk and any special additives in a conspicuous place, and prohibiting the use of qualifying words such as "jumbo" quart. Some witnesses have claimed that regulations on package shape and size would prevent this type of innovation, but this is not true.

Mr. Chairman, I think the committee will agree that as far as innovation is concerned, in both product content and packaging, the arguments of Mr. Manischewitz and his superiors are not entirely accurate. He also mentioned differentiation, and while innovation, differentiation, and competition are all closely related and indeed overlapping, I think it will be fruitful to examine each one separately.

In regard to differentiation, it has been argued that the small amount of standardization which this bill does require will lead to complete uniformity in both product and price; that product differentiation, which in turn leads to product improvement, would wither away and the American foods industries would stagnate in their present con-

dition. A quick journey to a supermarket would indicate the speciousness of that argument, too.

I have already mentioned one very striking example of product differentiation—hard and soft margarine. There are more. Oleomargarine can be made from corn oil, safflower, or cottonseed oil. Butter can be bought salted or unsalted, sweetened or unsweetened. Milk can be bought skimmed, homogenized, with vitamin D added, or with both vitamins D and A added. Vanilla “ice cream” can range anywhere from a rich dessert with plenty of real cream, to low-calorie products made mostly with water, and some milk. It can be solid ice cream, or very often it can be blown full of air.

And that only covers real product differentiation. Opponents of this legislation claim that package differentiation, which can unquestionably serve a useful purpose for various reasons, would be entirely eliminated, if all products had to be sold in packages of comparable weight. This, too, as I have already indicated, is not true. One of my staff members spent a couple of hours in a local supermarket a few weeks ago looking at packages and prices of dairy products and oleo. He found plenty of package differentiation. Butter can be purchased in at least five types of packages:  $\frac{1}{4}$ -pound blocks; 1-pound boxes of  $\frac{1}{4}$ -pound blocks, with a choice between two shapes of box—those with the  $\frac{1}{4}$ -pound blocks are on top of each other, and those with the  $\frac{1}{4}$ -pound blocks next to each other; 1-pound unquartered blocks which are usually only wrapped in paper, but sometimes in boxes also; or 2-pound bulk circular cartons.

At this particular store, milk was sold only in cardboard containers, but half gallons could be purchased either in  $\frac{1}{2}$ -gallon containers or in two attached quart containers. In other places, particularly markets in Wisconsin, I have seen milk available in glass bottles, some of which have special rubber handles and some of which do not.

The same quantity of vanilla ice cream could be purchased in a cardboard box, a bucket-shaped cardboard container, or a circular plastic container.

The greatest differentiation occurred in oleomargarine. In addition to the sizes and shapes used for butter, which with the exception of the 2-pound bulk, also are used for margarine, the following variations were found: shipped margarine boxes in which six  $\frac{1}{8}$ -pound blocks, or in two  $\frac{1}{2}$ -pound trays;  $\frac{1}{2}$ -pound patties, and the 1-pound boxes with little windows in them so the buyer could see the product inside. Not to mention all sorts of variations in color, design, title, and other normal package decorating practices.

The third and final question that has to be dealt with is that of competition. We have already seen quite conclusively that competition is strong enough to encourage continual innovation and considerable differentiation. So far, however, I have said nothing about price or about quality. I think you will agree that price competition is a reasonably accurate indication of quality competition. Obviously, this is not 100 percent accurate, but it is certainly the general assumption on which the market operates; people will not pay top prices for bottom quality.

Despite the fact that there are limits to which both milk and butter, coming almost straight from “ol’ Bossy” as they do, can differ in quality, there was a significant price range in similar types of butter and milk. Regular homogenized milk ranged 3 cents per half gallon,



a 5½ percent spread. The spread for salted butter was 6 cents from 72 to 78 cents, and 16 cents for all types of butter. It is possible to pay anywhere from 17½ to 43 cents a pound for oleomargarine; cheese prices range at least from 69 to 93 cents per pound; and vanilla ice cream from \$1.39 to \$2.38 per half gallon.

Again, we can assume that these prices indicate at least some quality competition, despite all the regulations. They certainly indicate that there is no lack of price competition.

Mr. Chairman, I hope the committee will agree with me that this quick review of an industry, which in effect, is already covered by truth in packaging, indicates that the arguments against it which invoke the threat of dire consequences to innovation, differentiation, and competition, and thereby to the entire American economic system, do not withstand close scrutiny. In other words, just letting things come in because they want to, is not the only way to sell products, or even the best way. This being so, it is possible to consider the bill before us on its real merits: on the fact that just letting things come in is very definitely not the best way to buy products because it precludes any standards by which buyers can make rational comparisons. Truth in packaging will insure that some minimum standards exist. It will make it possible for the consumer to judge before purchase all of the factors of competition which are not dependent on a product's actual use for comparison. Rather than eliminating all competition, or limiting competition to price factors, the real effect of this bill is to make it possible for the consumer not only to understand competition in quality, convenience and attractiveness, but also to determine with reasonable facility the value of the many alternative choices which that competition affords him. Truth in packaging legislation, if passed this session, will give the 89th Congress the distinction of having made the first significant breakthrough in this field, ranking with such other major accomplishments of this Congress as the Traffic Safety Act, aid to education and medicare.

I wholeheartedly urge you to make this great step forward in consumer protection.

The CHAIRMAN. We appreciate your testimony Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you for the opportunity Mr. Chairman.

The CHAIRMAN. We will now hear the statement of our colleague from Ohio, the Honorable Rodney Love. You may proceed Mr. Love.

#### STATEMENT OF HON. RODNEY M. LOVE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LOVE. Mr. Chairman, it is a credit to both your leadership and this committee that you have held hearings on the packaging and labeling legislation so soon after the Senate passed S. 985. Passage of this legislation will stand out as a major accomplishment of the 2d session of the 89th Congress.

Although consumers are not well organized, this interest draws its strength from numbers. When we discuss packaging and labeling, we are speaking of an issue which affects 180 million Americans. Much credit goes to Mrs. Esther Peterson, Special Assistant to the President on Consumer Affairs, and the many others who have helped make the voice of the people heard.

All of us who have ever gone into a large supermarket are aware of the difficulty in comparing the price of the many available brands and sizes—"giant," "large," "regular," "cents off," "5-cent savings," and "three servings" are characteristic eye catchers. Actually, they tell you nothing. The weights of the product, if you can isolate it from the other information on the label, is often in fractions. It has come to the point where only an engineer equipped with his slide rule can work out the cost per ounce and determine which size package or container is most economical.

On the other hand, the industries involved—producers, canners, and packers—have conscientiously outlined the ramifications and difficulties which they feel this legislation would usher upon both themselves and the consumer public. A major objection is that the proposed act would impose too tight standards. Government established, can and package sizes, would preclude the use of the same container for products of varying densities. Packers fear that they will not have sufficient flexibility to develop and try out new container sizes. These are legitimate concerns to both the manufacturers and the consumers.

Over the past year, I have been following this controversy in the newspapers and have read several witness statements. There are a few observations I would like to make. First, some regulatory legislation is necessary. This is not because the packagers, producers, and canners are out to bamboozle the public. For example, the canning industry has taken significant voluntary steps to facilitate price comparison by standardizing some can sizes. This is a good beginning, but more must be done. Federal legislation is necessary to eliminate the earlier cited labeling abuses. Second, it seems to me that the main purpose of this bill is to enable the housewife to walk into a grocery store, glance at the various product lines, and determine which costs the least. As Mrs. Bray, editorial director of the Consumers Union, emphasized before the Senate Commerce Committee, price determination is not the consumer's only problem. Quality is also important but, before you can make a meaningful judgment on quality, you must know the price.

Today, much partisan debate centers on the poverty program. Much of the money for rent supplements, food stamps, and similar welfare measures would never be needed if consumers—especially the poor—were given a better break in the first place. Deceptive labeling fools the poor and the uneducated most. Families earning less than \$2,000 spend at least 25 percent of their total income on food and home products. The Bureau of Labor Statistics estimated in 1960 that poor families spend more than two-thirds of the food and home product portion of their income on canned and packaged items. Esther Peterson mentioned the fact that a eastern Michigan university study involving 33 young married women with at least 1 year of college were sent to the supermarket and instructed to purchase the most economical buy on 20 items. They actually paid 9 percent more money than if they had successfully bought the most economical items. This average loss of 9 percent amounts to \$33 per year on food and home product goods. This loss is equal to over a month's food budget for a family whose annual income is \$2,000.

Mr. Chairman, my bill, H.R. 15102, is similar to S. 985 and H.R. 15440, and I join in support of these two bills. It is my hope that the

89th Congress will soon have to its credit a packaging and labeling law.

Thank you.

The CHAIRMAN. Thank you for your testimony Mr. Love.

We have several more Members to hear so we will proceed with our next witness, the Honorable Frank Thompson.

**STATEMENT OF HON. FRANK THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. THOMPSON. Mr. Chairman, I would like to thank you and the members of the committee for the opportunity to be here today to testify in support of H.R. 15440 cited as the Fair Packaging and Labeling Act—a bill to prevent the use of unfair or deceptive methods in the packaging or labeling of certain consumer commodities distributed in interstate and foreign commerce.

These truth-in-packaging bills are in the long tradition of progressive legislation dating back to 1906 with the passage of the first Federal Food and Drug Act. The Government has performed an invaluable service to the consumer by protecting him from harmful drugs, adulterated food, and false advertising. We now have the opportunity to extend this protection against certain merchandising practices which have arisen in recent years—namely, deceptive labeling and misleading packaging.

These merchandising practices are results of the revolution in which the packaged item has become in reality, the live salesman. What market item of today does not have its attractive color, enticing display, and imaginative lure to command the attention of the consumer? Let us add to these qualities the jungle of confusions of weights, measures, quantities and sizes; we have “jumbo,” “colossal,” “mammoth,” “big economy,” “large,” “medium,” “small,” all to describe sizes of packages. Now to these features let us add some 8,000 items on the shelves of the average supermarket of today. How can the American housewife, whose ability as a shopper is incomparable, find the best buys for her family without the aid of slide rule and magnifying glass? What will she do in 10 years when it is estimated that the number of items (mostly prepackaged) on the shelves of the average market will increase to 20,000?

I want to make it perfectly clear that I yield to no one in my admiration of the entrepreneurs responsible for the continuing revolution in packaging. Nowhere in the world are foodstuffs and other commodities more attractively or imaginatively presented for sale than in the American supermarket. Yet the consumer's opportunity to make accurate comparisons of weights or sizes is made extremely difficult since many of the weights are given in odd figures and there is no standardized agreement as to what the words “jumbo,” “family size” and so on mean. The legislation we are concerned with today will be helpful in establishing a market in which the exercise of wisdom is at least possible. The housewife is entitled to know the exact contents of a package offered for sale, its precise price, and a clear and understandable expression of both in figures and letters large enough to be readily visible. Fair competition will be stimulated and efficiency in

the concerned industries will be promoted. The informed consumer will reward the most efficient producer who offers the best product at the best price.

One of the most important and significant benefits of this legislation will be to our lower income families who, according to the Bureau of Labor Statistics, spend some 30 percent of their annual income on food. Since food and the other immediate necessities of life comprise such a large share of the cost of living budget, the working man's family has been put upon far more heavily than have others. Our aged citizens have been found to be in the same position as shown by the fact that in 1962 the median income of the family headed by a person age 65 or over was only \$3,204. This bill, if passed, will result in substantial savings for these groups who can ill afford to waste dollars in consumer buying because of false representation of products. It has been estimated that for each family these savings will amount to some \$250 yearly through wiser purchasing. No matter what the amount, this bill will save the American consumer money.

All of us here today know of the concern of the many constituents from whom we have received correspondence urging us to consider the consumer and his plight and in some way, to help alleviate it. This bill is a fine first step. It is part of a new "fair deal" for the American consumer. It will not infringe on the consumer's free choice but will rather aid him to make a more meaningful and informed one.

I would like to take this opportunity to reaffirm my strong support for this bill. I believe that this legislation will be beneficial to business, to the economy as well as to the consumer. The need is urgent. I would ask that favorable consideration be given the fair packaging and labeling bill. Thank you.

The CHAIRMAN. Thank you, Mr. Thompson. If there are no questions we shall hear next from Mr. McCarthy, of New York. We welcome you to this committee, Mr. McCarthy.

#### **STATEMENT OF HON. RICHARD D. MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. MCCARTHY. Mr. Chairman, members of the committee, my name is Richard D. McCarthy, and I am the Representative of the 39th Congressional District of New York.

I am happy to have this opportunity to testify in support of S. 985 as amended by the Senate Committee on Commerce. I cosponsored this bill (H.R. 14158) in the House.

The legislation before this committee would prevent the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in interstate and foreign commerce.

The purpose of this bill, as amended, is to insure that the labels of packaged consumer commodities are adequate, meaningful and reasonably uniform to inform consumers of the quantity of composition of the contents of the packages. In addition, it is intended to promote packaging and labeling practices which facilitate clear and easily computed price comparisons by consumers.

One provision of the bill directs the Secretary of Health, Education, and Welfare and the Federal Trade Commission to promulgate regulations to insure that the package label bears the name of the commodity and adequate identification of its manufacture.

Another provision would insure that the package label bears a separate statement of the net quantity of the contents expressed in ounces or fractions thereof. Exceptions are made for packages marketed in even pounds, pints, or quarts.

It seems to me that in order for the consumer who is constantly bombarded with increasing vast rows of competing products to make a meaningful choice with respect to value among packages of similar content, but with different packages and labels, he must first have the opportunity to compare prices.

Labels like "giant," "supergiant," "economy size," "family size" and "jumbo size" confuse today's supermarket shopper to such an extent that often the beleaguered housewife or her equally confused husband might well take along a scale, slide rule or even an MIT graduate in order to compute comparative prices.

The use of qualifying adjectives to exaggerate the quantity of contents both confuses and deceives the consumer. One product labeled "giant" may contain an entirely different amount of net contents than another product labeled "giant." How is a consumer to make a rational choice in a case like this?

To protect the consumer, the legislation before this committee would require that the separate net quantity statement be printed in conspicuous and legible type which is uniform as to type size and location on the label, minus qualifying words or phrases.

The administering agencies are also authorized to promulgate regulations on a commodity line basis when necessary to define and establish standards for designating the relative size of packages such as "small," "medium," and "large"; to establish and define servings; and to require the disclosure on labels of relevant ingredient information.

In labeling the net contents of a package "6 jumbo ounces" or "three servings," the consumer is faced with rather complicated exercises in mathematics. Just what constitutes "6 jumbo ounces" as compared to 6 ounces?

And I would venture to say that more housewives have been led astray by labeling which states the number of servings the manufacturer thinks are in a package but do not fulfill the needs of all families. Without meaningful standards of reference, a label which states that a package will serve a certain number is misleading.

Many housewives could testify, I am sure, as to the difference between one commodity which has more solid content than liquid as compared to a similar commodity which has more liquid content than solid. Yet the labels on the packages indicate identical amounts of net weight at, of course, different prices.

And finally, the bill authorizes the administering agencies to establish reasonable weights or quantities for the retail distribution of any consumer commodity either where the agency determines that the consumer's ability to make price per unit comparisons among the packages in which the commodity is being marketed is likely to be impaired or after the industry has been given an opportunity (from 12 to 18 months) to participate in the development of a voluntary product standard through the procedures for such standards administered by the Secretary of Commerce.

Many of those who oppose this legislation are emphatic in their argument that present law is more than adequate to protect the consumer. I disagree. I believe that present law offers little or no protection to the consumer who desires to purchase or who is financially compelled to purchase that commodity which gives the most in quantity for a given amount of money. Quality also is given high priority by consumers.

To those whose sole argument against truth-in-packaging legislation is the cost factor to manufacturers, I hasten to remind them that the bill provides certain very important cost-saving factors: (1) the bill utilizes the voluntary product standards procedures of the Department of Commerce; (2) it gives ample opportunity for hearings and recourse to judicial review; and (3) it provides that no regulation under the mandatory or discretionary sections of the bill shall take effect until the manufacturers involved have had full opportunity to effect any necessary packaging or labeling changes, and to allow reasonable time for the disposal of existing stocks and inventories. The bill also provides that no regulation adopted under the act shall preclude the continued use of returnable or reusable glass containers for beverages which were in inventory or circulating.

And the bill provides that nothing contained therein shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act, the Federal Food, Drug, and Cosmetic Act and the Hazardous Substances Labeling Act.

In sum, Mr. Chairman, I respectfully urge this committee to report a meaningful and positive bill to protect the consumer from deceptive and misleading packaging and labeling of consumer commodities.

The CHAIRMAN. Thank you, Mr. McCarthy, for your interesting views. The committee will consider all such viewpoints as may be brought to our attention. We have one more Member to hear at this time, the Honorable Richard Ottinger, also of New York.

#### **STATEMENT OF HON. RICHARD L. OTTINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. OTTINGER. Mr. Chairman, I am honored to speak before this distinguished committee in support of the truth-in-packaging bill. I am proud to have sponsored this important measure (H.R. 7534).

If you could see the number of complaints that come into my office each week from housewives and others about deceptive labeling and packaging, there would be no question in your mind that legislation is not only urgently needed but widely supported among the public as well.

Recently I distributed a questionnaire to the 160,000 families who live in my district. More than 18,000 took the time to answer 35 questions dealing with a wide range of domestic issues—and 95 percent supported this legislation. I am attaching a copy of that questionnaire for your records. I submit to this committee that this is an overwhelming expression of support—a popular demand for action.

I feel sure that the record of this hearing will be filled with the arguments for this bill, with catalogs of the abuses that have made its enactment an urgent necessity.

I would like to touch very briefly on some of the arguments that have been advanced against it. Frankly, I feel that these very arguments dramatize real need for this legislation.

In a recent syndicated column, a newspaper writer expressed grave concern over the damage that would be done to the economy if this bill "rushed" through Congress. I am going to ignore for a moment the strange use of the word "rush" that can cover more than 4 years of hearings, but what is the damage that he foresees? The writer points out that the housewife pays one-fourth of her total consumer dollar, or \$63 million a year for these packaged goods. He is afraid that there will be severe dislocation in the whole market if the bill is passed. I think that this is an incredible admission. Is he arguing that many of the 8,000 packaged goods the housewife buys are deliberately deceptive? I reject that harsh judgment of the integrity of American industry. Of course, there are a substantial number, but is it so great that the market would be jeopardized if they all had to tell the truth in packaging?

The columnist makes it abundantly clear that packaging plays a vital role in the sale of products. He does not mention that the package on the average costs 20 percent of the total cost of the product, but he does stress that it is essential in persuading the housewife to purchase. If the package is that crucial, then obviously it is vital that it be honest. If it is honest, then this legislation will not affect it, anyway. In fact, by wiping out unfair, deceptive competition, this legislation will benefit the honest packager and the truthful labeler as much as the retailer and the consumer.

The prophets of doom who have so little faith in the honesty of American industry foresee chaos as packagers and labelers convert to honest practices. This bill is not so harsh. It provides that no packager is required to mend his ways until the deceptive package or labels on hand have been exhausted. How can this "cripple" industry? Every housewife knows that change in packaging is the rule rather than the exception, anyway. I am sure that they will welcome a change for the better.

The columnist makes the point that the shrewd housewife can enforce honesty by selective buying. Now, he has already told us that she depends on the package to purchase. If the package deceives, how can she make an informed decision? This is the old argument of the confidence man who snares his victim by assuring him of his superior intelligence and ability. Mr. Chairman, 95 percent of my constituents are sick of being sold the Brooklyn Bridge in a package that says "soapsuds."

I submit in addition that shrewdness and selectivity alone are not enough. The housewife today has to be a computer to figure out what kind of a deal she is getting.

Now, let's say you're standing at the counter faced with a special offer on two giant boxes of soda crackers, both packaged by well-known firms and both apparently containing products of identical quality. One box is the "large economy size" weighing "39 large ounces" and selling for a special low price of 51 cents, the other is the "giant economy size" offering "1 pound and big 15 ounces" and selling for "only" 56 cents. Which is the better buy? Well, if you bought the

"giant economy size" you would be getting nicked by slightly more than 2 cents and it took me almost 20 minutes to figure that out. Does any housewife have 20 minutes to spend on every box of soap, every package of food?

But aside from the time factor, what do mere pennies really mean to her? Is it worth worrying about? Well, the slightly more than 2 cents differential is about 5 percent of the total cost of the product. Who can afford a 5-percent hike in their food bill, especially when it isn't buying you or your family anything but air?

Is this extreme? I think not. Potato chips come in 17 different sizes under a pound and sell for an incredible variety of prices. Take a look at your cereal shelf and see the different sizes, the odd weights and labored measures.

That could mean a lot of new clothes for the children or a meaningful addition to their education fund. For some it could mean the difference between victory and defeat in their private war on poverty.

If you don't think those few pennies on each product are important, some of the less scrupulous elements of the food industry certainly do. They know that when you are dealing with an \$80 billion industry, little stacks of pennies piled that high amount to a pretty substantial profit.

Mr. Chairman, this is not a harsh or restrictive bill. It will not unduly restrict private enterprise. It will not dictate pricing, sales, or interfere with any other legitimate marketing function. It only says that the label and the package must tell the truth. That is a simple, American tradition ardently supported by 95 percent of my constituents and the vast majority of economy-conscious Americans.

The CHAIRMAN. Thank you, Mr. Ottinger. That concludes those Members who wish to be heard at this time. Again we wish to say that we appreciate your presentation of your views, and all such views will be given every consideration by the members of this committee.

If there are no further questions, we shall continue with the panel members.

**FURTHER STATEMENTS OF HON. JOHN T. CONNOR, SECRETARY OF COMMERCE; PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN, UNDER SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; MRS. ESTHER PETERSON, ASSISTANT SECRETARY FOR LABOR STANDARDS, DEPARTMENT OF LABOR; THEODORE ELLENBOGEN, ASSISTANT GENERAL COUNSEL (LEGISLATION), HEW; WILLIAM W. GOODRICH, ASSISTANT GENERAL COUNSEL (FOOD AND DRUG), HEW; AND WINTON B. RANKIN, DEPUTY COMMISSIONER, FOOD AND DRUG ADMINISTRATION**

The CHAIRMAN. Mr. Jarman, have you any questions of the panel? Mr. JARMAN. I will put my question to Secretary Connor first.

In the hearing in the other body, I noticed that a reference was made by one manufacturer as to complying with packaging requirements under Canadian law. Do we have any legislative guidelines from any other country that bear closely on the legislative proposal that we have before us?



Secretary CONNOR. Mr. Jarman, just to summarize what I know you are already familiar with, with respect to imports of the kinds of products in packages coming into this country from other countries, such as Canada, there is the provision in the bill that those imported products will have to comply with the provisions just as if they had been made and sold in the United States, and enforcement with respect to imports will be handled through the Secretary of the Treasury in its customs operations.

With respect to products made in the United States for export, there is an exception to the rules that are otherwise applicable. In other words, products made in the United States and sold in the export markets will be bound by the provisions of the laws in the countries in which they are sold, but not bound by the provisions with respect to products under this bill made and sold in the United States.

In specific answer to your question, our studies do not reveal that other countries have exactly the same requirements as would be imposed on U.S. manufacturers in this case.

Mr. JARMAN. Does England or any other country of which you know have anything in their laws comparable to parts of section 5?

Secretary CONNOR. I don't know of any personally.

Let me ask my colleagues. Mr. Dixon?

Mr. DIXON. I know of none. I think the British are getting a little more interested in this subject. I have read things recently that would indicate that they are taking quite an active interest in this general subject. But I don't think they have promulgated anything as yet.

Mrs. PETERSON. I was consulting with my staff person as to whether or not we could supply information on the experiences of some other countries in packaging legislation that might help in showing how this type of legislation has been effective elsewhere.

Mr. JARMAN. I would be particularly interested in whether we, in a sense, are leading the way in this field, or whether any other countries have actual legislation on the books that would be a guideline for us.

Mrs. PETERSON. There is some strong legislation in other countries, particularly in requirements for labeling. I think it might be helpful if we did supply this information for you. We would be very happy to. (The information referred to follows:)

#### FOREIGN LAWS AND REGULATIONS ON PACKAGING AND LABELING IN SELECTED FOREIGN JURISDICTIONS

##### A. CANADA

Current Canadian laws regarding deceptive packaging and labeling practices are found in the consolidation of the Food and Drug Act (1953) and Food and Drug Regulations (1954). This combined document has been recently revised to include all subsequent amendments. The laws, based on those put forth earlier in the Food and Drug Act of 1938, parallel our own in large part. They set out similar broad ground rules for the manufacture and sale of foods, drugs, cosmetics, and devices.<sup>1</sup> They include extensive lists of particular products with standards of identity for each. They are promulgated under the authority of the National Department of Health and Welfare and are enforced by the appointed inspectors of this same organization. But they extend somewhat further in defining the realm of deceptive packaging and labeling than do our own.

<sup>1</sup>The definitions of "food," "drugs," "cosmetics," and "devices" are different from the U.S. definitions.

Source: United States Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, Hearings on Packaging and Labeling Legislation, pursuant to S. Res. 56 on S. 387, Appendix, Part 3, Eighty-eighth Congress, First Session, 1963 (materials prepared by the Library of Congress), pp. 933-974.

## "FOOD AND DRUGS ACT

*"Interpretation*

"2. (a) *advertisement*—'any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic, or device;'

"(c) *cosmetic*—'any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair or teeth, and includes deodorants and perfumes;'

"(d) *department*—'Department of National Health and Welfare;'

"(e) *device*—'any instrument, apparatus or contrivance, including components, parts, and accessories thereof, manufactured, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in man or animal;'

"(f) *drug*—'any substance or mixture of substances manufactured, sold or represented for use in

"(i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in man or animal,

"(ii) restoring, correcting or modifying organic functions in man or animal, or

"(iii) disinfection in premises in which food is manufactured, prepared or kept, or for the control of vermin in such premises;'

"(g) *food*—'any article manufactured, sold or represented for use as food or drink for man, chewing gum, and any ingredient that may be mixed with food for any purpose whatever;'

"(h) *inspector*—'any person designated as a Food and Drug Inspector under subsection (2) of sec. 24;'

"(i) *label*—'any legend, word or mark attached to, including in, belonging to or accompanying any food, drug, cosmetic, device, or package;'

"(j) *Minister*—'Minister of National Health and Welfare;'

"(k) *package*—'anything in which any food, drug, cosmetic, or device is wholly or partly contained, placed or packed;'

"(m) *sell*—'sell, offer for sale, expose for sale, have in possession for sale, and distribute.'

## "PART I

*"Food*

"5. (1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

"(2) An article of food that is not labeled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labeled or packaged contrary to subsection (1).

"6. Where a standard has been prescribed for a food, no person shall label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such food, unless the article complies with the prescribed standard."

*"Cosmetics*

"16. 'Where a standard has been prescribed for a cosmetic, no person shall label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such cosmetics, unless the article complies with the prescribed standard.'

## "PART II

*"Powers of Inspectors*

"21. (1) An inspector may at any reasonable time

"(a) enter any place where any reasonable grounds he believes any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged or stored, examine any such article and take samples thereof, and examine anything that he reasonably believes is used or capable of being used for such manufacture, preparation, preservation, packaging or storing;

"(b) open and examine any receptacle or package that on reasonable grounds he believes contains any article to which this Act or the regulations apply;

"(c) examine any books, documents or other records found in any place mentioned in paragraph (a) that on reasonable grounds he believes contain any information relevant to the enforcement of this Act with respect to any

article to which this Act or the regulations apply and make copies thereof or extracts therefrom; and

"(d) seize and detain for such time as may be necessary any article by means of or in relation to which he reasonably believes any provision of this Act or the regulations have been violated.

"(2) For the purposes of subsection (1), the expression 'article to which this Act or the regulations apply' includes

"(a) any food, drug, cosmetic or device,

"(b) anything used for the manufacture, preparation, preservation, packaging or storing thereof, and

"(c) any labelling or advertising material.

"(3) An inspector shall be furnished with a prescribed certificate of designation and on entering any place pursuant to subsection (1) shall if so required produce the certificate to the person in charge thereof.

"(4) The owner or person in charge of a place entered by an inspector pursuant to subsection (1) and every person found therein shall give the inspector all reasonable assistance in his power and furnish him with such information as he may reasonably require.

"(5) No person shall obstruct an inspector in the carrying out of his duties under this Act or the regulations.

"(6) No person shall knowingly make any false or misleading statement either verbally or in writing to any inspector engaged in carrying out his duties under this Act or the regulations.

"(8) Any article seized under this Act may at the option of an inspector be kept or stored in the building or place where it was seized or may at the direction of an inspector be removed to any other proper place.

#### **"Forfeiture**

"22. (1) An inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act and the regulations with respect thereto have been complied with.

"(2) Where an inspector has seized an article under this Act and the owner thereof or the person in whose possession the article was at the time of seizure consents to the destruction thereof, the article is thereupon forfeited to Her Majesty and may be destroyed or otherwise disposed of as the Minister may direct.

"(3) Where a person has been convicted of a violation of this Act or the regulations, the court or judge may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the accused or found with such article, be forfeited, and upon such order being made, such articles and things are forfeited to Her Majesty and may be disposed of as the Minister may direct.

"(4) Without prejudice to the operation of subsection (3), a judge of a superior, county or district court of the province in which any article was seized under this Act may, on the application of an inspector and on such notice to such persons as the judge directs, order that the article and anything of a similar nature found therewith be forfeited to Her Majesty to be disposed of as the Minister may direct, if the judge finds, after making such inquiry as he considers necessary, that the article is one by means of or in relation to which any of the provisions of this Act or the regulations were violated.

#### **"Regulations**

"24. (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect, and, in particular, but not so as to restrict the generality of the foregoing, may make regulations

"(a) declaring that any food or drug or class of food or drugs is adulterated if any prescribed substance or class of substances is present therein or has been added thereto or extracted or omitted therefrom;

"(b) respecting

"(i) the labeling and packaging and the offering, exposing and advertising for sale of food, drugs, cosmetics and devices,

"(ii) the size, dimensions, fill and other specifications of packages of food, drugs, cosmetics and devices,

"(iii) the sale or the condition of sale of any food, drug, cosmetic or device to prevent the consumer or purchaser thereof from being deceived or misled as to its quantity, character, value, composition,

merit or safety or to prevent injury to the health of the consumer or purchaser;

"(i) not inconsistent with this Act, respecting the powers and duties of inspectors and analysts and the taking of samples and the seizure, detention, forfeiture and disposition of articles;

"(j) exempting any food, drug, cosmetic or device from all or any of the provisions of this Act and prescribing the conditions of such exemption;

"(k) prescribing forms for the purposes of this Act and the regulations;

"(2) The Governor in Council may designate as an analyst or inspector any person on the staff of the department for such time as that person is employed in the department or for such time during the period of such employment as he may direct."

#### **"Penalties**

"25. Every person who violates any of the provisions of this Act or the regulations is guilty of an offence and is liable

"(a) on summary conviction for a first offence to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment, and for a subsequent offence to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment; and

"(b) on conviction upon indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

"26. A prosecution under paragraph (a) of section 25 may be instituted at any time within twelve months from the time the subject matter of the prosecution arose.

"27. A prosecution for a violation of this Act or the regulations may be instituted, heard, tried or determined in the place in which the offence was committed or the subject matter of the prosecution arose or in any place which the accused is apprehended or happens to be.

"28. (1) Subject to subsection (2), in a prosecution for the sale of any article in contravention of this Act or the regulations, if the accused proves to the satisfaction of the court or judge that

"(a) he purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time he purchased it, and

"(b) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations, the accused shall be acquitted.

#### **"Evidence**

"29. (2) Proof that a package containing any article to which this Act or the regulations apply bore a name or address purporting to be the name or address of the person by whom it was manufactured or packaged is *prima facie* proof, in a prosecution for a violation of this Act or the regulations, that the article was manufactured or packaged, as the case may be, by the person whose name or address appeared on the package.

#### **"Exports**

"30. This Act does not apply to any packaged food, drug, cosmetic or device, not manufactured for consumption in Canada and not sold for consumption in Canada, if the package is marked in distinct overprinting with the word 'Export', and a certificate that the package and its contents do not contravene any known requirement of the law of the country to which it is or is about to be consigned, has been issued in respect thereof in prescribed form and manner.

### **"FOOD AND DRUG REGULATIONS**

#### **"PART A—ADMINISTRATION**

#### **"General**

A.01.002. These regulations, where applicable, prescribe the standards of composition, strength, potency, purity, quality or other property of the article of food, drug, cosmetic or device to which they refer.

\* See Regulations, p. 13.

**"Interpretation**

**"A.01.010.** In these regulations

"(b) 'Act' means the Food and Drugs Act,

"(d) 'Director' means the Director of the Food and Drug Divisions of the Department,

"(e) 'inner label' means the label on or affixed to an immediate container of a food, drug, cosmetic, or device,

"(f) 'Lot number' means any combination of letters, figures, or both, by which any food or drug can be traced in manufacture and identified in distribution,

"(g) 'manufacturer', except in Division 3 and Division 4 of *part C*,<sup>4</sup> means a person who under his own name, or under a trade, design or word mark, trade name or other name, word or mark controlled by him sells a food, drug, cosmetic or device, and includes a firm, partnership, or corporation,

"(h) 'official method' means the method of analysis or examination designated by the Director for use in the administration of the Act,

"(i) 'outer label' means the label on or affixed to the outside of a package of a food, drug, cosmetic or device.

**"A.01.012.** The Director shall, upon request, indicate that a method is acceptable or otherwise upon its submission to him for a ruling.

**"PART B—FOODS****"General**

**"B.01.001.<sup>5</sup>** In this Part

"(b) 'common name' means, with reference to a food, the name of the food printed on boldface type in these Regulations, or if the name of the food is not so printed, the name in English or French by which the food is generally known :

"(f) 'per cent' means per cent by weight, unless otherwise stated ;

**"B.01.002.** Subject to section B.01.010, no person shall sell a food that is not labelled as required by these Regulations.

**"B.01.003.<sup>6</sup>** Except as otherwise provided in these Regulations, the label of a package of food shall carry

"(a) on the main panel of the label

"(i) the brand or trade name if any,

"(ii) the common name of the food, and

"(iii) in close proximity to the common name, a correct declaration of the net contents of the package in terms of weight, measure or number, as is the usual practice in describing such article,

"(b) grouped together on the main panel or on any panel other than the bottom of the package

"(i) a declaration by name of Class II, Class III or Class IV preservative therein,

"(ii) a declaration of any food colour added thereto,

"(iii) a declaration of any artificial or imitation flavouring preparation added thereto,

"(iv) in the case of food consisting of more than one ingredient and for which no standard is prescribed in these Regulations, a complete list of the ingredients by their common names in descending order of their proportions, unless the quantity of each ingredient is stated in terms of percentage or proportionate composition, and

"(v) any other statement required by these Regulations to be declared, and

"(c) on the main panel or on any panel other than the bottom of the package, the name and address of the manufacturer.

**"B.01.004.** All information required by these Regulations to be carried on a

"(a) clearly and prominently displayed thereon, and label shall be

"(b) readily discernible to the purchaser or consumer under the customary conditions of purchase and use.

**"B.01.005.<sup>7</sup>** For the purposes of paragraph (a) of section B.01.004,

<sup>4</sup> Part C is concerned with Drugs and is hence not relevant to our discussion.

<sup>5</sup> Amend. of 12-5-62.

<sup>6</sup> Amend. of 17-8-60.

<sup>7</sup> Amendments of 17-8-60 and 4-3-63.

"(a) a common name consisting of more than one word shall be deemed to be clearly and prominently displayed on the main panel of the label if each word (other than articles, conjunctions or prepositions) is in identical type and identically displayed; and

"(b) a declaration of net contents, including each numeral in any indicated fraction, on a package of food shall be deemed to be clearly and prominently displayed thereon if it is in boldface type and not less than

"(i) one-sixteenth of an inch in height on packages the main panel of the label of which has an area of twenty square inches or less;

"(ii) one-eighth of an inch in height on packages the main panel of the label of which has an area of more than twenty but not more than forty square inches;

"(iii) one-quarter of an inch in height on packages the main panel of the label of which has an area of more than forty but not more than one hundred square inches; and

"(iv) three-eighths of an inch in height on packages the main panel of the label of which has an area of more than one hundred square inches.

"B.01.006. Notwithstanding sub-paragraph (iii) of paragraph (a) of section B.01.006, a declaration of net contents is not required on

"(a) a package of food the weight of which including the package is less than two ounces, and

"(b) fluid dairy products sold in glass containers of one-half pint, one pint, one quart, one-half gallon, three quarts or one gallon capacity.

"B.10.007." Sub-paragraph (iii) of paragraph (a) of section B.01.006, and section B.01.004 do not apply to the position or size of the declaration of net contents on the label

"(a) of a package of food where the manner of declaration is described or prescribed by

"(i) a statute of the Parliament of Canada or any Regulation made thereunder, or

"(ii) a Provincial Statute or any Regulation made thereunder,

"(b) of a food packed in glass containers on which the declaration of net contents appears twice on the shoulder or upper part of the container in blown block lettering with flat stippled face, in numerals not less than

"(i) three-eighths of an inch in height where the containers are over ten ounces, and

"(ii) one-quarter of an inch in height on containers of ten ounces or less,

"(c) of alcoholic beverages or soft drinks.

"(d) of margarine, shortening, lard and similar packaged food fats when packed in packages of one-quarter pound, one-half pound or one pound or multiples thereof,

"(e) of eggs packed in a carton, and

"(f) of food that is packed to a catch weight.

"B.01.008. Where inner and outer labels are employed on a package of food, all label declarations required by these Regulations shall appear on both the inner and outer labels.

"B.01.009. No reference, direct or indirect, to the Act or to these Regulations shall be made upon any label of, or in any advertisement for, a food unless such reference is a specific requirement of the Act or these Regulations.

"B.01.010. Section B. 1.003 does not apply to a food packaged from bulk at the place where the food is retailed unless that package bears a statement, mark or device describing the ingredients or the substances contained therein other than

"(a) the name of the food, and

"(b) the net contents of the package.

"B.01.031. Where a statement or claim implying a special dietary use is made on the label of, or in any advertisement for a food, the label shall carry a statement of the type of diet for which that food is recommended.

"B.01.032. Where a statement or claim implying a low sodium content is made on the label of, or in any advertisement for a food, the label shall carry a declaration of the sodium content in milligrams per 100 grams.

\* Amend. of 5-5-60.

\* Amend. 21-12-61.

**"B.01.034.** A food containing saccharin, cyclohexylsulphamic acid or the salts of either shall carry on the label the following statement:

"'Contains (naming the synthetic sweetener) a non-nutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets.'

**"B.01.041.** Where a standard for a food is provided in these regulations, only those ingredients named in the standard shall be used in the food.

**"B.01.051.** Subject to section B.01.052, where the contents of a package of food are expressed in terms of weight, measure or number, no variation below the quantity declared on the label is permitted other than the following:

"(a) a variation due exclusively to weighing, measuring or counting that occurs in the course of packaging the food, but not to the extent that the content of the package is less than the quantity declared on the label, as determined by the official method.

"(b) variations due exclusively to differences in the capacity of containers resulting solely from unavoidable difficulties in manufacturing, but no greater variation is permitted because of the design of the containers than is usual in the case of containers of similar capacity that can be manufactured so as to be of approximately uniform capacity, and

"(c) variations in weight or measure that unavoidably result from the ordinary and customary exposure of the package to evaporation or to the absorption of water under normal atmospheric conditions.

**"B.01.052.** Notwithstanding section B.01.051, where the contents of a package of food are expressed in terms of minimum weight, measure, or number, the contents of the package shall not be less than the minimum expressed.

#### "PART E

**"E.01.001.** No person shall sell a cosmetic that is not labelled as required by these regulations.

**"E.01.002.** Except as provided in this *Part* a cosmetic shall carry

"(a) on both the inner and outer labels

"(i) the name, if any, of the cosmetic, and the description of the cosmetic if necessary for the identification thereof, and

"(ii) the name and address of the manufacturer or distributor, and where a manufacturer or distributor has more than one place of business such address shall be that of his head office or principal place of business, but the address of any branch place of business may be printed on the label in type no larger than that used for printing the address of the head office or principal place of business.

"(b) on the outer label, a declaration of the net content expressed in terms of

"(i) weight for solids,

"(ii) fluid measure for liquids, or

"(iii) weight for semi-solids except that fluid measure may be used if in accordance with established commercial practice and it gives accurate information in respect of the net content,

combined with numerical count if the content is subdivided, and

"(c) on the inner label

"(i) where a hazard exists adequate directions for safe use, and

"(ii) any warning, caution or special direction required by these regulations to be placed thereon.

**"E.01.003.** Notwithstanding E.01.002, a statement of the content need not appear on the outer label of

"(a) a package of perfume, toilet water or the like the net content of which does not exceed 4 fluid ounces, and

"(b) a package of solid or liquid cosmetic the net content of which does not exceed one ounce.

**"E.01.005.** Any statement or information required by this *Part* to appear on a label shall be legibly and conspicuously displayed thereon.

**"E.01.006.** Where a package of a cosmetic has only one label, such label shall contain all the information required by these regulations to be shown on both the inner and the outer labels.

**"E.01.012.** No persons shall sell any cosmetic which carries on the label thereof or in any advertisement therefor, any symbol or device to denote that the cosmetic has been prepared or compounded in accordance with a prescription.

"E.01.015. No person shall sell a cosmetic in a collapsible tube packed in a carton if the dimensions of the carton exceed

"(a) for all tubes without chip-board protectors, and tubes of less than 1¼" diameter with chip-board protectors:

"(i) length—over-all tube length filled and clipped plus 8/32"

"(ii) height—diameter of tube plus 4/32".

"(iii) width—1.25 times tube diameter plus 4/32", and

"(b) for all tubes of 1¼" diameter and over with chip-board protectors:

"(i) length—over-all tube length filled and clipped plus 10/32",

"(ii) height—diameter of tube plus 4/32", and

"(iii) width—1.25 times tube diameter plus 4/32".

"E.01.016. Notwithstanding E.01.015, when an applicator is essential to the use of a cosmetic solid in a collapsible tube packed in a carton, and such applicator is included in the carton, the dimensions of the carton may exceed those set out in E.01.015 provided that the main panel of the label of the carton clearly indicates that it is a combination package."

#### B. GREAT BRITAIN

##### "STATUTES

"I. Merchandise Marks Act, 1887, *Public General Acts*, 50 & 51, Vict., 1886-1887, c. 28, Secs. 2(1) (d) ; 2(2) ; 3(1) (2) and 5, pp. 72-74.

"II. Merchandise Marks Act, 1953, *Public General Acts and Measures of 1953*, 1 & 2 Eliz. 2, ch. 48, pp. 645-648. Whole Act.

"III. Sale of Food (Weights and Measures) Act, 1926, in *Public General Acts and Measures*, 1926, 16 & 17 Geo. 5, ch. 63, Secs. 1-5, 9, 10, 11, 13, pp. 529-530, 533, 534-535, 537.

"IV. Food and Drugs Act, 1955, *Public General Acts* \* \* \* of 1955, 4 Eliz. 2, ch. 16, Secs. 6-7, pp. 602-604.

"V. Weights and Measures Act, 1963, chapter 31.

##### "REGULATIONS

"I. *Statutory Instruments*, 1953, Part 1, No. 536.

"II. *Statutory Instruments*, 1957, Part 1, No. 1880.

Labeling and packaging in Great Britain are controlled by statute and implementing regulations.

##### "STATUTES

I. The Merchandise Marks Act, 1887 (50 & 51 Vict. Ch. 28). Section 2(d) of this Act provides that—

"Every person who [\* \* \*] applies any false trade description" to goods; [\* \* \*] shall subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act."

The act also provides in section 2(3), that—

"Every person guilty of an offence against this Act shall be liable—

"(i) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

"(ii) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

"(iii) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed."

And provides—

"(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court think fit.

"(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

\* " 'Trade description' means an description, statement, or other indication, direct or indirect, (a) as to number, quantity, measure, gauge, or weight of any goods, \* \* \* "—*Halsbury's Statutes of England*. 2d edition (London, 1954), p. 916.



"(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before the court, of summary jurisdiction shall on appealing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly."

Section 5 of the same act, concerned with the application of marks and descriptions of goods, provides that—

"A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the asset of the proprietor shall lie on the defendant."

II. The Merchandise Marks Act, 1953 (1 and 2 Eliz. 2, Ch. 48), section 1, amends the previous act by extending the provision regarding "false trade description" to include "misleading" trade descriptions.

"1. (2) In the said section three (which also defines 'false trade description' to mean a trade description which is false in a material respect as regards the goods to which it is applied, to include every alteration of a trade description making the description false in a material respect) that definition shall be amended by inserting after the word 'false' in the second and third places where it occurs the words 'or misleading'.

"(3) Without prejudice to the generality of those definitions as so amended, a trade description (to whichever of the matters mentioned in the definition of "trade description" as so amended it relates) shall be deemed for the purposes of the said Act to be a false trade description if it is calculated to be misunderstood as, or mistaken for, an indication as to the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied, and anything calculated to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

"4. Section two of the Merchandise Marks Act, 1887, shall be amended by the deletion of subsection (2) thereof and the insertion of the following subsection:

"(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves either—

"(2) that, having taken all reasonable precautions against committing an offence against this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

"(b) that otherwise he had acted innocently; be guilty of an offence against this Act."

III. The Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. V. Ch. 63), specifies that—

"1. A person shall not, in selling any article of food by weight, measure or number, deliver or cause to be delivered to the purchaser a less weight, measure or number, as the case may be, than is purported to be sold.

"2. A statement as to weight or measure of a pre-packed<sup>1</sup> article of food shall be deemed to be a statement as to the weight or measure thereof unless otherwise specified.

"3. A person shall not, on or in connection with the sale of any article of food, or in exposing or offering any article of food for sale, make any misrepresentation either by word of mouth or otherwise, or commit any other act calculated

<sup>1</sup> "Pre-packed" article is interpreted as any article which is packed or made up in advance ready for retail sale in a wrapper or container, and where any article packed or made up in a wrapper or container is found on any premises where such articles are packed, kept or stored for sale, the article shall be deemed to be packed or made up in advance ready for retail sale unless the contrary is proved.

to mislead the purchaser or prospective purchaser, as to the weight or measure of the article \* \* \*

The act also contains provisions with respect to prepacked articles of food (tea, coffee, beans, ground coffee, cocoa, cocoa powder, chocolate powder, and potatoes).

Section 4(2) of the act states that—

"A person shall not sell or have in his possession for sale any pre-packed article of food of any kind of the kinds set forth in the First Schedule to this Act, unless—

"(a) the article is made up for sale in quantities of two ounces, or in multiples of two ounces up to a limit of eight ounces, in multiples of a quarter of a pound up to a limit of two pounds, in multiples of half a pound up to a limit of four pounds, or in multiples of one pound; and

"(b) the wrapper or container bears thereon, or on a label securely attached thereto, a true statement in plain characters of the minimum net weight of the article contained therein, or, in any case where the weight of the wrapper or container is permitted by the preceding subsection to be included in the weight purported to be sold, of the minimum weight of the article with its wrapper or container;"

The Board of Trade is authorized by section 9 of the same act to make regulations for the purpose—

"(a) of making additions to or removals from or otherwise varying the list of articles set forth in the First Schedule to this Act:

"(b) of requiring any articles of food other than those required by this Act to be sold by weight or by measure to be sold only by weight or by measure, and of applying to any such articles any of the provisions of this Act, either without modification or subject to such modifications as may be specified in the regulations;

"(c) of requiring any pre-packed articles of food other than those mentioned in the First Schedule to this Act to be labeled with an indication of their weight or measure:

"(d) of prescribing the manner in which indications of weight or measure are to be marked on pre-packed articles required by or under this Act to be marked with such indications, and the manner of re-sealing wrappers and containers broken open under this Act;"

Penalties of fines not exceeding 5 pounds or, upon a second or subsequent conviction of such an offense, to a fine not exceeding 20 pounds can be levied.

"(2) Before any regulations other than regulations under paragraph (d) of subsection (1) of this section are made, the draft of the proposed regulations shall be laid before both Houses of Parliament, and the regulations shall not be made unless both Houses by resolution approve the draft either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the regulations may be made in the form in which they have been so approved.

"Regulations made under paragraph (d) of subsection (1) of this section shall be laid before both Houses of Parliament as soon as may be after they are made.

"10. (1) The power of inspection and of entry conferred upon inspectors of weights and measures by section forty-eight of the Weights and Measures Act, 1878, for the purposes therein specified shall extend to the inspection and weighing or measuring by any such inspector of any pre-packed articles of food for the purpose of ascertaining whether they comply with the requirements of this Act, and to the entry into any place in which the inspector has reasonable cause to believe that any such pre-packed articles intended for sale are situated.

"(2) Where any person has in his possession for sale or delivery on sale any pre-packed article of food of any kind which is required by or under this Act to be sold by weight or measure, or any article of food in respect of which any representation of weights and measure is made, he shall, if so requested by an inspector of weights and measures weigh or measure such article in the inspector's presence or permit the inspector to weigh or measure it, and, if necessary for this purpose, shall break open, or allow the inspector to break open, any wrapper or container in which such article is packed, and shall also if so requested by the inspector sell the article to him.

"11. (1) Any person who refuses to comply with a request made by an inspector of weights and measures under this Act, or in any other manner obstructs or hinders an inspector in the exercise of his duties under this Act, shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds, and in the case of a second or subsequent offence ten pounds.

"(3) Any person who acts in contravention of any other provision of this Act for which no special penalty is provided shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds, in the case of a second offence twenty pounds, and in the case of a third or subsequent offence fifty pounds."

IV. The Food and Drugs Act, 1955 (4 & 5 Eliz. 2, Ch. 16), contains, in *Section 6*, provisions prohibiting the use of labels on food or drugs that falsely describe any food or drug, or are calculated to mislead to the nature, substance, or quality of the article.

*Section 7* authorizes the Minister of Agriculture, Fisheries and Food to make regulations for imposing requirements as to labeling, marking, or advertising of food and descriptions which may be applied to food.

Supervision with respect to labeling as to weight, measure, and number of food is under the control of the Board of Trade.

"6. (1) A person who gives with any food or drug sold by him, or displays with any food or drug exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which—

"(a) falsely describes the food or drug, or

"(b) is calculated to mislead as to its nature, substance or quality, shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as aforesaid.

"7. (1) Without prejudice to the provisions of the last foregoing section, but subject to the next following subsection, the Ministers may make regulations for imposing requirements as to, and otherwise regulating, the labeling, marking or advertising of food intended for sale for human consumption, and the descriptions which may be applied to such food.

"(2) In relation to the labeling and marking of food with respect to weight, measure and number, the last foregoing subsection shall apply with the substitution for the reference to the Ministers of a reference to the Board of Trade.

"(3) Regulations made under this section may make provision for any purpose authorized by paragraph (c) of subsection (1) of section four of this Act in the case of regulations under that section.

"(4) Regulations made under this section may apply to cream, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk."

#### REGULATIONS

Under the authority of the statutes referred to above, regulations have been invoked for carrying out the purposes and objectives of the legislation.

Specific regulations regarding labeling are set up by—

1. The Labeling of Food Order, 1958, in *Statutory Instruments* 1958, Part 1, No. 536, pages 666-67.

#### "Labeling of pre-packed food for sale by retail

"3. No person shall sell by retail or display for sale by retail any pre-packed food, unless there appears on a label marked on or securely attached to the wrapper or container a true statement as to the matters hereinafter mentioned in this Part of this Order.

"4. (1) The said statement shall be clearly legible and shall appear conspicuously and in a prominent position on the label, and if the food is pre-packed in more than one wrapper or container the label shall be marked on or attached to the innermost wrapper or container and, if it is not clearly legible through the outermost wrapper or container, a label bearing a like statement shall be marked on or securely attached to, or be clearly legible through, the outermost wrapper or container. For the purposes of this provision, a 'liner' (that is to say, a plain immediate wrapping which under ordinary conditions of use would not be removed from the next outer wrapper or container) shall not be counted as a wrapper or container.

"(2) The said statement shall specify the name of either the packer or the labeler of the food and an address at which such person carries on business:

"Provided that—

"(a) Where the food is packed or labeled on behalf of or on the instructions of another person and such other person carries on business at an address in the United Kingdom, the statement may specify the name and the said address of that other person instead of the name and address of the packer or labeler, as the may be;

"(b) it shall be sufficient if instead of the particulars specified in this paragraph there appears prominently on the label a trademark (other than a certification trademark) of which there is in the Trade Marks Register kept under the authority of the Trade Marks Act, 1938 (a), a subsisting entry in respect of such food, and if there is associated therewith on the label the words 'Registered Trade Mark'.

"(3) Except as respects intoxicating liquor pre-packed for sale as such, the said statement shall also specify—

"(a) in the case of a food consisting of one ingredient the appropriate designation of the ingredient;

"(b) in the case of a food made of two or more ingredients the common or usual name (if any) of the food and the appropriate designation of each ingredient, and, unless the quantity or proportion of each ingredient is specified the ingredients shall be specified in the order of the proportion in which they were used, the ingredient used in the greatest proportion (by weight) being specified first."

II. The Pre-packed Food (Weight and Measures: Marketing) Regulations, 1957, in *Statutory Instruments*, 1957, Part 1, No. 1880 pages 1010-15 *passim*.

*"Sale of Pre-Packed Food by Retail. Marking of Wrappers and Containers"*

"1. Except in the case of pre-packed food to which paragraph (2) of this Regulation applies, no person shall sell by retail or have in his possession for sale by retail any pre-packed food unless the wrapper or container in which it is packed or a label securely attached thereto is properly marked, that is to say, marked in accordance with the appropriate requirements set out in the First Schedule hereto, with a true statement of the minimum quantity of the food contained therein expressed in terms:

"(a) in the case of any article of food described in the Second Schedule hereto, of the number thereof;

"(b) in any other case, of net weight only, of measure only or of both net weight and measure.

*"Sale of Pre-packed Food otherwise than by Retail. Marking of Wrappers and Containers. Furnishing of Particulars"*

"2. Every person who, for the purposes of a sale thereof otherwise than by retail, delivers or causes to be delivered any pre-packed food shall deliver that food or cause it to be delivered packed in a wrapper or container which is marked, or to which wrapper or container is securely attached a label which is marked, in accordance with the provisions of Regulation 1 as if it were being sold by retail:

*"Loose Labels inserted within Wrappers or Containers"*

"3. A label not actually attached to a wrapper or container in which food is pre-packed but inserted within the wrapper or container or, where more than one wrapper or container is used, within the outer one shall be deemed for the purposes of these Regulations to be securely attached thereto if it is inserted in such a manner that it cannot be removed without first breaking open the wrapper or container or, as the case may be, the outer one.

"4. If any person contravenes or fails to comply with any of these Regulations he shall be guilty of an offence against that Regulation.

"(2) A person guilty of an offence against any of these Regulations shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both, and in the case of a continuing offence, to a further fine not exceeding five pounds for each day during which the offence continues after conviction.

**"FIRST SCHEDULE"**

*"Requirements with Respect to the Proper Marking of Wrappers and Containers"*

"The requirements to be complied with for the proper marking of any wrapper or container in pursuance of Regulation 1 are the following:

"1. The statement of quantity in terms of weight, measure or number and the statement of aggregate weight shall be marked in legible characters in a prominent place upon the wrapper or container or label where, in each case, it can be easily read and, in the case of food pre-packed in more than one wrapper or container, the marking shall be so placed (whether upon an inner or an outer wrapper or container or upon both or upon a label securely attached to one or to the other or to both) that it can be easily read without detaching or unwrapping any of the wrappers or containers.

"2. (a) Subject to the provisions of sub-paragraph (b) of this paragraph, the statement shall be marked upon a plain background and in distinct contrast thereto, that is to say, shall be in dark characters on a light background or in light characters on a dark background ;

"Provided that, where by reason of the transparency of the wrapper, container or label, the contents thereof are visible, the said contents shall be deemed to be the background for the purposes of this paragraph.

"(b) In the case of food packed in a metal, plastic, glass or papier mâché container, or a container having a stopper, lid or other sealing device made of any of those materials, the statement may be marked upon the metal, plastic, glass or papier mâché (but not elsewhere) by means of embossed characters whether or not such characters are in distinct colour contrast to the background.

"3. A statement of any quantity in terms of metric weight or measure shall be accompanied in close proximity thereto by a statement of that quantity in terms of its equivalent in imperial weight or measure.

"5. A statement of any weight, measure or number shall not be qualified by any words, figures or other marks importing any approximation or modification in such statement (e.g., 'approximately', 'about', 'when packed').

"6. Where the weight to be indicated is the aggregate weight of the wrapper or container and the food contained therein, the designation of weight and the number of units thereof shall be followed or preceded by the word 'gross' or by the words 'gross weight'.

"7. A statement of measure on a container which is marked on the container itself, whether pursuant to paragraph 2(b) of this Schedule or otherwise, shall be expressed in terms of the appropriate designation of measure and the number of units thereof preceded by the word 'contents' (e.g. contents 10 fl. oz.) or the words 'minimum contents' (e.g. contents 10 fl. oz.).

#### "SECOND SCHEDULE

"Cereal biscuit breakfast food.

"Corn on cob packed without added liquid.

"Fruit preservative tablets.

"Rennet tablets.

"Saccharin tablets.

"Shell eggs.

"Soft drink tablets.

"Sweetening tablets.

"Vanilla pods."

#### 1963 LEGISLATION

Additional weights and measures legislation has recently been passed by the English Parliament.

Pertinent provisions follow :

#### *Part IV. Regulation of certain transactions in goods*

"21. (2) The Board may by order make provision with respect to any goods specified in the order for all or any of the following purposes, that is to say, to ensure that, except in such cases or in such circumstances as may be so specified, the goods in question—

"(a) are sold only by quantity expressed in such manner as may be so specified ; or

"(b) are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, only if the container is marked with such information as to the quantity of the goods as may be so specified ; or

"(c) are sold, or are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, or are made for sale, only in such quantities as may be so specified ; or

"(d) are not sold without the quantity sold expressed as aforesaid being made known to the buyer at or before such time as may be so specified ; or

"(e) are sold by means of, or are offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—

"(i) such information as to the quantity of the goods in question comprised in each item for sale by means of that machine as may be so specified ; and

"(ii) a statement of the name and address of the seller ; or

"(3) An order under subsection (2) of this section may be made with respect to any goods, including goods to which any of the provisions of any of the Schedules aforesaid applies, and may—

"(a) make provision for any of the purposes mentioned in the said subsection (2) in such manner, whether by means of amending, or of applying with or without modifications, or of excluding the application in whole or in part of, any provision of this Act or of any previous order under the said subsection (2) or otherwise,

"(b) make such, if any, different provision for retail and other sales respectively, and

"(c) contain such consequential, incidental or supplementary provision, whether by such means as aforesaid or otherwise, as may appear to the Board to be expedient, and may in particular make provision in respect to contraventions of the order for which no penalty is provided by this Act for the imposition of penalties not exceeding those provided by section 52<sup>22</sup> of this Act for an offence under this Act.

"(4) The Board may make regulations—

"(a) as to the manner in which any container required by any of the provisions of any of the Schedules aforesaid or of any order under subsection (2) of this section to be marked with information as to the quantity of the goods made up therein is to be so marked;

"(b) as to the manner in which any information required by any such provision as aforesaid to be displayed on or in a vending machine is to be so displayed;

"(c) as to the conditions which must be satisfied in marking with information as to the quantity of goods made up therein the container in or on which any goods are made up for sale (whether by way of prepacking or otherwise) where those goods are goods on a sale of which (whether any sale or a sale of any particular description) the quantity of the goods sold is required by any such provision as aforesaid to be made known to the buyer at or before a particular time;

"(d) as to the units of measurement to be used in marking any such container or machine as aforesaid with any information as to quantity;

"(e) for securing, in the case of pre-packed goods, that the container is so marked as to enable the packer to be identified;

"(f) as to the method by which and conditions under which quantity is to be determined in connection with any information with respect thereto required by or under this section;

"(g) permitting in the case of such goods and in such circumstances as may be specified in the regulations the weight of such articles used in making up the goods for sale as may be so specified to be included in the net weight of the goods for the purposes of this Act; and any person who contravenes any regulation made under this subsection otherwise than by virtue of paragraph (f) or (g) thereof shall be guilty of an offence.<sup>23</sup>

"22. (2) Subject to the provisions of this Part of this Act, in the case of any goods required by or under this Act to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities, or to be pre-packed, or to be otherwise made up as aforesaid, only if the container is marked with particular information, any person shall be guilty of an offence who—

"(a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell, or

"(b) except in the course of carriage of the goods for reward has in his possession for delivery after sale, or

"(c) causes or suffers any other person to have in his possession for sale or for delivery after sale, seel or agree to sell on behalf of the first-mentioned person, any such goods pre-packed, otherwise made up as aforesaid or made otherwise than in that quantity or otherwise than in or on a container so marked, as the case may be, whether the sale is, or is to be, by retail or otherwise.

"24. (2) Subject to the provisions of this Part of this Act, any person who, on or in connection with the sale or purchase of any goods, or in exposing or offer-

<sup>22</sup> See p. 22.

<sup>23</sup> See p. 22, Schedule 4, Part VI, Sec. 52 (1), (2).

ing any goods for sale, or in purporting to make known to the buyer thereof the quantity of any goods sold, or in offering to purchase any goods, makes any misrepresentation either by word of mouth or otherwise as to the quantity of the goods, or does any other act calculated to mislead a person buying or selling the goods as to the quantity thereof, shall be guilty of an offence.

*"Part VI. Miscellaneous and general"*

"48. (2) Subject to the production if so requested of his credentials, an inspector may at any time within the area aforesaid seize and detain any article which he has reasonable cause to believe is liable to be forfeited under this Act.

"52. (1) Any person guilty of an offence under any of the following provisions of this Act, that is to say, sections 10(5), 11(2), 11(6), 12(2), 12(3), 13(3), 13(4), 14(1), 14(3), 18(3), 20(2), 20(4), 20(5), 31 and 49(1), paragraphs 4 and 5 of Schedule 5 and paragraph 20(2) of Schedule 6, shall be liable on summary conviction to a fine not exceeding twenty pounds.

"(2) Any person guilty of an offence under any provision of this Act other than those mentioned in the foregoing subsection shall be liable on summary conviction to a fine not exceeding one hundred pounds (or, in the case of a second or any subsequent offence under the same provision, two hundred and fifty pounds), or to imprisonment for a term not exceeding three months, or to both.

*"SCHEDULE 4"*

*"Part VIII. Miscellaneous foods to be sold by or marked with net weight and to be pre-packed only in fixed quantities"*

"1. This Part of this Schedule applies to the following foods, that is to say—

"(a) cereal breakfast foods in flake form, other than cereal biscuit breakfast foods;

"(b) tea, cocoa (including cocoa powder and chocolate powder) and coffee (including coffee beans, coffee powders of all kinds, ground coffee and mixtures of coffee and chicory other than such mixtures in the form of liquid essences);

"(c) honey, other than chunk honey;

"(d) jam and marmalade, other than diabetic jam or marmalade;

"(e) jelly preserves;

"(f) molasses, syrup and treacle;

"(g) salt, other than cut lump salt;

"(h) sugar of the following prescriptions, that is to say, caster, granulated, cube and icing;

"(i) dried vegetables of any of the following descriptions, that is to say, beans, lentils and peas (including split peas);

"(j) barley kernels, pearl barley, rice (including ground rice and rice flakes), sago, semolina and tapioca;

"(k) flour of bean, maize, oats, pea, rice, ryes, soya bean or wheat;

"(l) flour products of any of the following descriptions, that is to say—

"(i) cake flour, other than cake mixtures and sponge mixtures;

"(ii) cornflour, other than blancmange powders and custard powders;

"(iii) macaroni and similar products;

"(iv) self-raising flour.

"3. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if—

"(a) they are made up in one of the following quantities by net weight, that is to say, one, two, four, eight or twelve ounces, one pound, one and a half pounds, or a multiple of one pound; and

"(b) the container is marked with an indication of quantity by net weight.

"4. There shall be exempted from all requirements of paragraphs 2 and 3 of this Part of this Schedule—

"(a) honey in comb;

"(b) any other goods in a quantity of less than half an ounce;

"and there shall be exempted from the requirements of sub-paragraph (a) of the said paragraph 3 cereal breakfast foods pre-packed in a quantity not exceeding one and a quarter ounces, and dried vegetables pre-packed in a quantity not exceeding three ounces.

***"Part IX. Miscellaneous foods to be pre-packed only when marked with net weight and in fixed quantities and to be otherwise sold by net weight or gross weight"***

"1. This part of this Schedule applies to the following foods, that is to say—

"(a) butter, compound cooking fat, dripping, lard, margarine, shredded suet and any mixture of butter and margarine;

"(b) dried fruits of any one or more of the following descriptions, that is to say, apples (including dried apple rings), apricots, currants, dates, figs, muscatels, nectarines, peaches, pears (including dried pear rings), prunes, raisins and sultanas;

"(c) dried fruit salad;

"(d) oatflakes, oatmeal and rolled oats;

"(e) sugar, other than caster, granulated, cube or icing sugar.

"2. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies which are not pre-packed shall be sold by retail only—

"(a) by net weight; or

"(b) if sold in a container which does not exceed the appropriate permitted weight specified, in the case of any of the foods mentioned in subparagraph (a) of the foregoing paragraph, in Table A or, in any other case, in Table B of Part XII of this Schedule, either by net weight or by gross weight.<sup>14</sup>

"3. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if—

"(a) they are made up in one of the following quantities, that is to say, two, four, eight or twelve ounces, one pound, one and a half pounds, or a multiple of one pound; and

"(b) the container is marked with an indication of quantity, being in each case quantity by net weight.

"4. There shall be exempted from all requirements of this Part of this Schedule any goods in a quantity of less than one ounce.

***"Part X. Miscellaneous foods to be marked when pre-packed with quantity by number"***

"1. This Part of this Schedule applies to foods of any of the following descriptions, that is to say—

"(a) cereal biscuit breakfast foods, other than foods in the case of which none of the biscuits weighs more than one-third of an ounce;

"(b) fruit preservative tablets, rennet tablets, saccharin tablets, soft drink tablets and sweetening tablets;

(c) shell eggs;

(d) vanilla pods.

"2. Goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity by number:

"Provided that there shall be exempted from the requirements of this paragraph—

"(a) shell eggs pre-packed in a quantity of not more than six, if the container is such that all the eggs can be clearly seen by a prospective purchaser;

"(b) any goods in a quantity by number of one.

***"Part XI. Other pre-packed foods"***

"1. This Part of this Schedule applies to foods of any description which are not goods—

"(a) required by or under any other provision of this Act to be pre-packed only if the container is marked with an indication of quantity; or

"(b) in the case of which when sold pre-packed (whether on any sale or on a sale of any particular description) the quantity of the goods sold expressed in a particular manner is required by or under any other provision of this Act to be made known to the buyer at or before a particular time; or

<sup>14</sup> Table A permits 2½ drams container weight for each pound gross weight. Table B is graduated, permitting 4½ drams container weight for the first pound of gross weight, 4 drams per pound (of gross weight) for a gross weight between 1 and 2 pounds, 3 drams per pound for a gross weight between 2 and 4 pounds, and 2½ drams per pound for a gross weight exceeding 4 pounds.



"(c) expressly exempted by any such provision from all such requirements which would otherwise apply thereto.

"2. Subject to paragraph 3 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by capacity measurement.

"3. The following shall be exempted from the requirements of this Part of this Schedule, that is to say—

"(3) condensed milk (including evaporated milk) and dried milk;

"(11) soft drinks of any description in a syphon or in a quantity of less than five fluid ounces;

"(12) sugar and chocolate confectionery of any of the following descriptions, that is to say—

"(a) Easter eggs;

"(b) figurines of chocolate or of sugar;

"(c) rock or barley sugar in sticks or novelty shapes;

"(d) single articles weighing less than three ounces;

"(e) a collection of articles each of which is either an article such as is mentioned in paragraph (a), (b), (c) or (d) of this sub-paragraph or an article in a container marked with an indication of quantity by net weight;

"(13) goods of any other description in a quantity of less than one ounce or of less than one fluid ounce.

#### "SCHEDULE 7

##### *"Part V. Perfumery and toilet preparations*

"1. This Part of this Schedule applies to goods of any of the following descriptions, that is to say—

"(a) perfumes and toilet waters;

"(b) other toilet preparations for use on the hair or scalp of human beings;

"(c) other toilet preparations for external use on any other part of the human body; and

"(d) dentifrices,

"whether in liquid, solid or any other form, including any such goods which are medicated but are not pharmaceutical preparations, but excluding soap in any form.

"2. Goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by volume:

"Provided that there shall be exempted from the requirements of this paragraph—

"(a) any goods such as are mentioned in sub-paragraph (a) of the foregoing paragraph in a quantity not exceeding twelve grammes or not exceeding twenty cubic centimetres;

"(b) any goods such as are mentioned in sub-paragraph (b) of the foregoing paragraph in a quantity not exceeding twenty grammes or not exceeding twenty cubic centimetres;

"(c) any goods such as are mentioned in sub-paragraph (c) or (d) of the foregoing paragraph in a quantity not exceeding twelve grammes or not exceeding twelve cubic centimetres.

##### *"Part VI. Soap*

"1. Subject to paragraph 2 of this Part of this Schedule—

"(a) soap in the form of a cake, tablet or bar shall be pre-packed only if the container is marked with an indication of quantity by net weight;

"(b) liquid soap shall be pre-packed only if the container is marked with an indication of quantity by capacity measurement;

"(c) soap in any other form—

"(i) unless pre-packed, shall be sold by retail only by net weight;

"(ii) shall be pre-packed only if the container is marked with an indication of quantity by net weight.

"2. There shall be exempted from the requirements of this Part of this Schedule—

"(a) liquid soap in a quantity of less than five fluid ounces;

"(b) soap in any other form in a quantity of less than one ounce."

## C. ITALY

## A. SURVEY OF LEGAL SOURCES

No specific statute on packaging and labeling practices could be found in the Italian law collections. Many scattered regulations on the subject are incorporated into different laws primarily dealing with fraud in the manufacture and sale of goods, and particularly in those governing the production and sale of foodstuffs.

The basic law still remains the Royal Decree No. 2033 of October 15, 1924, as amended, and the Regulation No. 1361 of July 1, 1926, enforcing this Law. Subsequently, numerous laws and decrees dealing with a variety of products, not previously regulated, were adopted.

The translation of some pertinent provisions is given in the following:

## B. TRANSLATION OF PERTINENT PROVISIONS

1. Royal Decree Law No. 2033 of October 15, 1925. Suppression of Fraud in the Manufacture and Sale of Goods for Farm Use and Farm Products as Amended (*Repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari*). Off. Gaz. No. 281, 1925.

"Section 13. \* \* \* par. 5. In stores selling wine to consumers, notices must be placed in a visible manner with clear letters easily legible, showing the alcoholic content of the wine for sale.

"Similar information must be placed on all containers from which wine is served on the spot as well as on all other containers on the selling premises or on the containers of wine prepared for retail sale.

\* \* \* \* \*

"Section 32. \* \* \* par. 3. Cheese manufactured from milk other than from sheep, or only partly from sheep's milk, manufactured in shapes not exceeding 3 kilograms in weight and showing some exterior characteristics similar to those of sheep's-milk cheese, shall be called cow's cheese (*formaggio vacchino*).

"A cheese defined as cow's cheese pursuant to the foregoing paragraph, even if imported or intended for export, cannot be put on sale unless furnished with a stamp carrying the legend 'cow' (*vacchino*).

"Such a legend, which must have dimensions of 4 centimeters in height, 15 centimeters in length, and 0.5 centimeters in depth, shall be pressed on the bottom of the shapes and repeated so as to cover the entire length of the bottom.

"Section 33. Whoever manufactures, sells, offers for sale, or in any other way places cheese on the market, must specify its fat content in the manner established by the Regulation.

"Section 47. Whoever sells, offers for sale, or in any other way places on the market or, based upon contractual obligation, furnishes his business associates with substances and products specified in the present Decree without making statements and giving information or [acts] contrary to the prohibitions and limitations stated in the present Decree and the Regulation enforcing it, shall be punished by a fine of not less than 50,000 nor more than one million liras."

\* \* \* \* \*

2. Royal Decree No. 1361 of July 1, 1926. Regulation Concerning the Enforcement of the Royal Decree No. 2033 of October 15, 1925 on the Suppression of Fraud in the Manufacture and Sale of Goods for Farm Use and Farm Products, as Amended (*Regolamento per l'esecuzione del R.D. 15 ottobre 1925, no. 2033, concernente la repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari*). Off. Gaz. No. 189, 1926.

"Section 5. The information prescribed for goods and products placed on the market in casks, barrels, cans and other containers or in bags, linen and paper bags, or in other wrappings, must be repeated on the containers, bags and wrappings, as follows:

"(a) on casks, barrels, boxes and any other containers or wooden packing, the information must be burned or marked by some other indelible means;

"(b) on cans or in general on metal containers the information must be painted on with oil paints or stamped on in some other indelible way;

"(c) on bags or other similar wrappings the information must be stamped in an obvious way and clearly legible.

"(d) on glass containers the information must be given on strong labels firmly attached to the container ;

"(e) on bags, paper bags, and on paper wrappings in general, the information must be printed on the paper itself. However, information stamped on with aniline ink or handwritten, provided it is clear and indelible, shall also be allowed.

"When different goods, contained in separate containers, are packaged together, it is not necessary to repeat on such package the diverse information given on the individual containers.

"Section 6. The directions specified in the foregoing section must be written in clearly visible letters and in any case it may not be less obvious than any other directions placed on the containers, bags, wrappings and the like.

"As a rule, along with the directions already prescribed, no others shall be allowed except for those relating to the first and last name or firm of the manufacturer, the importer, or the seller, his residence, the net and gross weight of each bag or container or relating to a trademark or warranty, when such exists, and should not tend to lead the buyer into error as to the nature of the merchandise. However, products sold in cans or other closed containers or wrappings shall be allowed to bear also particular illustrations relating to the contents of the cans themselves.

"Insecticides, seed and mixed fertilizers may also bear on their containers or wrappings instructions pertaining to the use of the product contained therein.

"Section 7. The directions placed directly on the merchandise must be affixed by means of stamps, with deeply incised letters and not be less visible than any other directions on the same merchandise. No other directions shall be allowed except those specified in the foregoing section.

"Section 8. Whoever keeps merchandise specified in the Decree-Law for sales purposes, is obliged to see to it that the statements and the directions prescribed by the same Decree-Law and the present Regulation are always clearly legible.

"Section 9. When portions of goods contained in a bag, container, wrapping or in an original form are placed on sale, it is not necessary to repeat the directions on the portion sold; but in the store a sign with the description of the merchandise, the pertinent statements and the price of all the merchandise must be displayed.

"Section 10. The directions to be affixed outside and inside the production or sales premises of some products pursuant to the Decree-Law, must be shown on suitable signs solidly attached to the wall or the door of the premises, with letters at least ten centimeters high in black on a white background.

"No other specifications except those prescribed for each sales item should appear on the sign. However, on sales premises also the words 'for sale' and the price are allowed.

"Section 12. Imported wine, oil, butter and syrups shall be sold in the Republic under their original name.

"Section 34. When an antiparasite product is put on the market with a particular name other than that specified in the Decree-Law and the present Regulation, such name may always be added to the information provided it does not tend to lead the buyer into error as to the nature of the product.

"Section 37. The information specified in the foregoing sections concerning seed sold on the public market must be repeated on clearly visible labels to be placed on goods for sale. On the same label must also be indicated the origin of the seed.

"Section 83. Margarine cheese must be colored on the outside and over the entire surface with victory-red coloring matter (*rosso-Vittoria*).

"Such coloring must be applied before the cheese leaves the manufacturer's storehouse and is delivered or displayed to the public. If ensuing conditions should obliterate, alter or lighten the coloring, the holder of the margarine cheese shall be obliged to restore it promptly."

3. Royal Decree No. 45 of February 3, 1901. General Health Regulation. (*Regolamento generale sanitario*). Off. Gaz. No. 44, 1901.

"Section 108. Alimentary products and beverages which do not correspond in their nature, substance and quality to the description by which they are designated or requested as well as alimentary products and beverages which are partly deprived of their own nutritious contents or mixed with material of an inferior quality or in any other way treated in such a manner as to alter their natural composition shall be considered altered.

"The sale of food or beverages shall be permitted when they are clearly supplied with written information concerning the changes they have undergone."

4. Royal Decree No. 1548 of July 7, 1927. Provisions Concerning the Manufacture, Import and Trade of Products of the Fishing Industry, Preserved in Containers (*Norme per la fabbricazione, l'importazione e il commercio dei prodotti alimentari della pesca conservati in recipienti*). Off. Gaz. No. 204, 1927.

"Section 4. It is forbidden to put on the market or in any other way to use for consumption products of the fishing industry, in cans or other containers unless the same bear the following specific statements concerning:

- "(a) the contents;
- "(b) the quality of oil and other substances used for preservation;
- "(c) the net weight of the contents;
- "(d) the name of the producer;
- "(e) the place of manufacture.

"The above statements shall be made in raised letters or lithography in an indelible manner on metal containers, burned on those of wood, and in raised letters on those of glass.

"The labels, signs and information or marks placed on the containers shall not cover or hide obligatory statements as specified in the above letters (a-e), or be inconsistent therewith.

"All obligatory statements prescribed in the present section must also appear on wrappings of any kind, in which the same containers are eventually wrapped.

"Section 6. Pursuant to the present Decree containers of preserved fish may not bear the name 'sardine' except for the '*Clupea Pilchardus*' and the name 'anchovy' except for the '*engraulis encrasicolus*'.

"The appellation tuna fish shall appear only on the species '*orcynus tynnus*.' "For the species '*tynnus alelonga*' (*germon*) and for the species '*pelamys*' (*bonito*) the appellation white tuna fish (*tonno bianco*) and *tonnetto* must be employed, respectively."

5. Royal Decree No. 904 of June 23, 1932. Approval of the Regulation on the Application of Law No. 368 of March 17, 1932, Governing the Types of Flour and Bread (*Approvazione del regolamento per l'applicazione della legge 17 marzo 1932 no. 368 che disciplina i tipi di farina e di pane*). Off. Gaz. No. 182, 1932.

"Sec. 6. The labels which must be placed on bags of flour, in accordance with the provision of Section 5 of the Law, must bear, in addition to the name of the mill producer firm, the legend:

- "flour type 00
- "flour type 0
- "flour type 1
- "flour type 2

according to the quality of the product contained in the bags. The seals attached in order to guarantee that the bags are properly closed must bear the name of the mill firm pressed on in [clearly] decipherable manner."

#### D. FRANCE

##### INTRODUCTION

The bulk of the French regulatory provisions concerning packaging and containers forms a part of the general regulation on food products as contained in the law of August 1, 1905.

This basic law, which also deals with the repression of fraud, deception, and misrepresentation in the sale of goods, underwent several changes in the course of the years by the laws of August 5, 1908, July 28, 1912, by the decrees of April 15, 1912, and of June 28, 1912, by the laws of May 6, 1919, July 29, 1929, the decree of June 14, 1938, the law of February 11, 1951, and finally by the law on finance of April 14, 1952, which have been followed by numerous decisions and administrative orders up to very recent times. These scattered enactments and issuances have been compiled or surveyed in systematic collections and extensive studies.<sup>15</sup>

<sup>15</sup> R. Lefaux. *Emballage et conditionnement modernes*, Paris, 1960; also R. Dehove (Inspector General of the Services for the Repression of Fraud at the French Ministry of Agriculture). *Le réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955.

Briefly stated according to the 1905 law deceit occurs whenever one party fails to fulfill what has been agreed upon in trade transactions. And, misrepresentation occurs whenever, to the detriment of the buyer, a process or an operation tends to deteriorate the advertised contents of an item, or it is manufactured or introduced with the appearance of an already known and determined item although it does not have the same elements and form.

#### LEGAL PROTECTION

Although in Europe advertising is not as highly developed and the packaging industry is not so advanced as in this country, yet, in France the courts and administrative organs are provided with sufficient legislation to counteract misleading information and misrepresentation and, consequently, civil and penal sanctions may be enforced against those who commit abuses.

In France, as elsewhere, it is felt that the packaging contributes greatly to the sale of a product and, therefore, every manufacturer and merchant has a legitimate desire to see that his unique packaging is not used by his competitors to mislead the public.

##### A. Protection of manufacturer

Under French legislation a manufacturer is provided with the means to protect himself against such competitors and third persons who try to steal his ideas. The law on trademarks protects his product; the characteristics of packaging and labeling, although not a part of the trademark, are protected from imitation by third persons by the provisions dealing with unfair practices and competition. This protection covers packaging insofar as the imitation of its characteristics is concerned. In fact, whoever copies such characteristic features from a competitor acts in contravention of good faith and becomes guilty of unfair competition.<sup>14</sup> However, the elements of any packaging which do not fall within these protected areas<sup>15</sup> may be copied provided this is not done for the purpose of confusing or deceiving the consumers or damaging the interests of a given person or enterprise.<sup>16</sup>

Another means of protection is the law on designs and industrial models which applies also to packaging and its new esthetic effects for a certain length of time.<sup>17</sup>

The owner of certain original packaging must, to a certain extent, tolerate the danger of confusion deriving from imitations especially when the imitation has become necessary due to the use made of certain products. In other words, as long as the different elements of packaging are determined by the nature of the product, by its use or by its manner of manufacture, these elements may be utilized by others. But, the more the creator of a certain packaging has characterized it by original elements, the more others should beware of imitating it in order to avoid the danger of confusion.

And according to most recent case law packaging, in many cases, may be protected from imitation even when its composing elements are not original provided that the packaging, although lacking in originality, has become so distinct that the public considers that the product comes from a certain manufacturer.

French statutes and regulations are very detailed in prescribing the type of labeling, color, and paper, etc. For instance, for alcoholic beverages a label of yellow gold paper is reserved for brandies of a certain type and region, whenever it is kept in separate storehouses. However, such brandies lose the right to this type of labeling when put together with other alcoholic beverages. Labels of other colors are reserved for other types of brandies.<sup>18</sup>

In the field of food, the following example is illustrative of the type of control exercised by the French statutes. Articles 5 and 7 of the law of December 19, 1910, provide that the word "honey" may not be used for any product except that made by bees. Even during a normal period of production, if the bees are fed with sugar or sugar substances other than honey, the product obtained must

<sup>14</sup> Dalloz. *Répertoire de droit commercial*, v. I, Paris, 1957, pp. 554-568.

<sup>15</sup> To claim protection for packaging, one must prove that when used for the first time it was absolutely new. (See M. Quetard. *Étude générale sur les emballages*, Paris, 1949, p. 277.)

<sup>16</sup> Law of Aug. 1, 1905, as amended, Code de Commerce.

<sup>17</sup> *Lois Dessins et Modèles*, Institut National de la Propriété Industrielle, Paris, 1958.

<sup>18</sup> R. Debove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, pp. 322-405.

be named sugar honey; also, the word "honey" may not be used when this product has been used for caramels if it has been diluted by 25 percent, nor may it be used in any other manner if the product has been adulterated. The law expressly forbids such abuses and punishes them as a fraud. To make the use of this term even clearer, decision No. 56 of the Council of Ministers of July 25, 1921, ordered that even the term "mieliné" (honeyed) may not be used under these circumstances.

French legislation in this field goes so far as to provide precise regulations for livestock fodder, and article 3 of the law of February 3, 1949, requires the approval of the Ministry of Agriculture for all labeling, cataloging, prospectuses, and other advertising forms before they can be used on products.

#### *B. Protection of consumers*

As in the case of the legal protection given by French legislation to manufacturers and merchants for their own ideas in the field of packaging, labeling, advertising, etc., this legislation also provides specific provisions aiming exclusively at the protection of consumers. As was seen supra, and will be seen in the summaries and translated statutes, courts and administrative organs are provided with general legal provisions and regulations to strike at fraudulent and unfair practices against manufacturers and merchants for the misleading and deceptive labeling of items in packaging and advertising. According to French legal writers, the law of 1930, which provides the basic principle, gives the courts the power to pass judgment on misleading information in the presenting, introducing, packaging, and labeling of goods.<sup>21</sup>

The law of August 1, 1905, provides the public administration in the executive branch of the Government and the local organs with the power to issue regulations concerning the measures to be taken for the enforcement of the law<sup>22</sup> while the law of April 5, 1884, grants them regulatory powers in fields not covered by the general rules laid down by the laws and decrees or any other statutes dealing with the subject.<sup>23</sup>

#### TRANSLATION OF PERTINENT LEGAL TEXTS AND SUMMARIES OF STATUTES

##### *Deception and attempt to deceive*<sup>24</sup>

"Art. 1. Whoever deceives or attempts to deceive, be it in regard to the nature, primary qualities, composition and care of all goods, their type and origin, and attributes false designations to goods \* \* \* or to the quantity of items to be delivered, or delivers goods other than those which are subject to a contract, shall be punished by imprisonment for from three months to one year or by a fine of from 100 to 5,000 francs or both.

"Art. 2. The prison penalty for the offenses provided for in the preceding article [Art. 1] shall be increased to two years if the offense or the attempt to commit such an offense concerns weights and measures or other false or inexact means involved, and practices tending to falsify an analysis or the components of it, or the weight, measurements, or volume of any item, or whenever fraudulent indications are given tending to indicate previous exact operations were made, or falsely claiming that official supervision existed."

##### *Regulations of the public administration and their regulatory powers*

"Art. 11. In regard to the proper measures to be taken in enforcing this law, regulations shall be issued by the administrative bodies (organs) concerning: (1) the sale and putting on sale, displaying and holding of all goods covered by this law; (2) the inscription or marks indicating either the composition or origin of goods which, in the interest of consumers and as a warranty from vendors, shall appear on the packaging of the goods or on the goods themselves, on the outward indicia, the manner of presentation necessary to assure a fair sale or putting on sale, as well as the special marks which may be attached or which it is obligatory to attach to French goods for export. The definition and denomination of beverages, commodities and products shall be made in accordance with trade practices, on the basis of the permissible characteristics which they may possess because of their manufacture and methods of pre-

<sup>21</sup> R. Dehove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, p. 52; also Dalloz. *Répertoire de droit commercial*, v. I, pp. 555-568.

<sup>22</sup> Art. 11 of the law of Aug. 1, 1905, as amended by the law of June 29, 1907.

<sup>23</sup> Arts. 94, 97, and 99 of the law of Apr. 5, 1884.

<sup>24</sup> Law of Aug. 1, 1905, as amended and implemented; also Dehove, R., op. cit., pp. 1-19; also Lefaux, R., op. cit., pp. 210-249.

serving the features which render them suitable for consumption \* \* \* [irrelevant]."<sup>22</sup>

*Tests of general statutes completing the law of August 1, 1905*

Mayors as well as prefects are empowered to supervise the proper sale of goods, i.e., in regard to their weight or volume, size, and condition. Moreover, mayors are empowered to issue orders applicable only to certain objects subject to their authority and supervision, in addition to the general rules.<sup>23</sup>

The law of July 22, 1948, provides for the creation of organs for any branch of activity whenever the public need so requires, the so-called Technical-Industrial Centers (*Centres Techniques Industrielles*) which, within the frame of the existing legislation, participate in the establishment of rules for the control of quality (arts. 1 and 2).

In the absence of regulations issued by the public administrative organs as provided for in the law of August 1, 1905, the practices of a specific trade generally supply the norms in that field.<sup>24</sup>

*Price marking*

Article 33 of the Government order of June 30, 1945, requires that the prices of goods of any kind be clearly marked by means of labeling, ticketing, and similar displays.<sup>25</sup>

In principle, imported goods must also conform to the regulations in force by making any false marking or advertising punishable.<sup>26</sup> Exported French goods must generally meet the requirements prescribed for domestic sale, although, exceptions are sometimes made to preserve the French trade from inferior conditions provided the products meet the requirements of the countries to which they are exported.<sup>27</sup>

*Labeling of goods*<sup>28</sup>

(1) Regulations of a general nature:

(a) Generic denomination.

According to French law the name applied to all goods and products having common features and character, regardless of the manufacturer or vendor, is called a generic denomination, and is designed essentially to inform the buyer of the nature, kind, and use of the goods.

The labeling and description containing this denomination should be in visible characters, not abbreviated, and the size of the typographical characters is to be specified in regulations issued for the purpose.

(b) Fancy advertising.

Fancy advertising and commercial marks which, contrary to the generic naming and labeling, are particular to each manufacturer or vendor, may be put on the packaging, but it is essential that they should not be confused with the general and regular labeling, and, above all, they should not lead to confusion regarding the real nature of the product to which they are applied.

(c) Name and address of the manufacturer or vendor.

The affixing of the manufacturer's name and address is generally made obligatory by special regulations. However, the name may be replaced sometimes by the name of the firm, and, in rare instances, by code indications. In general, the manufacturer or the vendor is held, out of honesty and self-respect, to make the information on the labels of products clear even when this is not obligatory.

*Weight indications*<sup>29</sup>

Article 5 of the decree of April 15, 1912, stipulates that in commercial establishments the net and gross weight and the tare of merchandise should be clearly indicated on the packages and containers:

<sup>22</sup> Law on the Repression of Fraud and Falsifications of Aug. 1, 1905, as amended. According to art. 13 of this law, certain violations of the regulations, where the good faith of the violator has been proved, shall not be considered crimes but culpable negligence and shall be punished as petty offenses by the police. But in case of recidivism the court of petty sessions (*tribunal correctionnelle*) shall have jurisdiction.

<sup>23</sup> Arts. 94, 97, and 99 of the law of Apr. 5, 1884.

<sup>24</sup> R. Dehove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, p. 8.

<sup>25</sup> This order was amended by another order issued on the basis of arts. 15-17 of the decree of Nov. 22, 1938, which is even more explicit in regard to the exactness of price marking of goods of any kind.

<sup>26</sup> Law of Mar. 28, 1930, and law of Apr. 20, 1932; see also R. Dehove, op. cit., p. 12.

<sup>27</sup> Decree of May 14, 1938.

<sup>28</sup> R. Dehove, op. cit., pp. 49-51.

<sup>29</sup> R. Dehove, op. cit., pp. 50-51.

"Whenever the net weight of products is known by the manufacturer or merchant who packaged them or may be easily ascertained by him, regulations require that an indication of the net weight and this weight alone shall be given. Exceptions are made when this is impossible and, in such cases, the manufacturer or merchant shall indicate the net weight, the gross weight, and the tare."<sup>22</sup>

Thus, whenever only one weight is shown without specification, it is considered to be the real weight of the item, i.e., the net weight. Under French law, whenever a buyer has good reason to believe that the indication stands for the net weight of the merchandise and it is false, this shall constitute an attempt to deceive, and may be prosecuted as fraud.<sup>23</sup> On the other hand, the indication of the gross weight only without the tare is also insufficient.

The indication of the weight is obligatory only for the permanent packages containing items for further retail or wholesale trade, and is unnecessary for temporary packages.

Products in de luxe packages should be considered as sold separately for it seems that the buyer in such cases gives less importance to the quantity delivered than to the manner in which they are presented. Also, it should be added that weight is irrelevant in packages of small dimensions which are given away or sold as samples.<sup>24</sup>

In addition to permanent, de luxe, and temporary packaging, French legislation provides also for another type of packaging called *Emballages perdus* (disposable packaging). This refers to the kind of packaging, technically designed to be used once only, such as the containers for fruits and vegetables which are sufficiently resistant to reach the sale's destination in good condition (art. 1 of the decision of Mar. 8, 1951). This statute provides that the reuse of this type of packaging is forbidden and this must be clearly stated on the label by the letters E.P. (standing for "Reuse Forbidden") in indelible red together with the name of the shipper and the place of origin.

#### *Information and advertising leading to confusion*

"Art. 6. The use of all information, advertising, or any other form or sign likely to create confusion in the mind of the buyer regarding weight, volume, size, nature and origin of foodstuffs, beverages, etc., shall be forbidden under all circumstances and forms especially in regard to:

- "(1) packaging;
- "(2) labeling, capsules, seals, signs and any other wrappings;
- "(3) all commercial papers, invoices, catalogs, prospectuses, prices, signs, placards, boards and any other form of advertising."<sup>25</sup>

#### II. SWEDEN

The problem of advertising, labeling, and packaging of goods so as to give consumers correct and full information as to their quality and price has been under discussion many times by various Government agencies and committees as well as by organizations of merchants and consumers. The measures actually taken in this matter, which is considered of primary importance in Sweden, may be divided into two groups:

- (1) statutory provisions and regulations of Government agencies; and
- (2) steps taken pursuant to agreements between central organizations of merchants and consumers (trade unions and other organizations of wage earners) or by organizations of businessmen on their own initiative or on the initiative of the Government, or special agencies acting on a voluntary basis and consisting of representatives appointed by organizations of businessmen and consumers.

##### A. STATUTORY PROVISIONS

A general law applicable in this field is the Law for the Prevention of Unfair Competition (*Lag med vissa bestämmelser mot illojal konkurrens*) of May 29, 1931,<sup>26</sup> sections 1 and 9, as amended by the law of May 22, 1942, which reads as follows:

<sup>22</sup> Order No. 25 of Apr. 15, 1912.

<sup>23</sup> Order No. 9 of Sept. 5, 1908.

<sup>24</sup> Order No. 21 of Nov. 1, 1912.

<sup>25</sup> Decree of Apr. 15, 1912, as amended by the law of Mar. 26, 1930.

<sup>26</sup> *Sveriges Rikets Lag* (The Law of Sweden) S 21, Stockholm, Norstedt & Söner, 1961: 892-894.



"Sec. 1. Whoever, in carrying on his business, supplies false information about his merchandise by means of a placard, an advertisement, circular letter, prospectus or price list or in any other communication intended to reach a large number of people, and if this information is clearly contrary to fair business principles concerning the business itself or the goods offered for sale, or if the false information is calculated to give the impression of a good bargain, provided he was aware or should have been aware of the misrepresentation in his communication, shall be punished by a fine for unfair advertising, or in particularly grave circumstances, by confinement for a period not to exceed one year; he shall furthermore be liable for the damage caused.

"The same punishment shall be inflicted upon a person who, while employed in or working for the business of another person, independently carries out the advertising mentioned in paragraph 1.

"In the meaning of this section communication shall likewise be understood to include representation in illustrations or through other special arrangements.

"Sec. 9. Whoever, in carrying on business activities, uses a name, firm, trademark, makeup, or other mark which may be easily confused with a mark previously used for some other business enterprise or goods or production of this enterprise, provided he does so with the intention of causing such confusion, shall be punished by a fine, or, in particularly grave circumstances, by confinement for a period not to exceed one year if the offense committed by him is not subject to severer punishment according to other laws; he shall furthermore be liable for the damage caused.

Special laws on the labeling and packaging of food and drugs are in force. The Law on Comestibles (*Licmedelstadga*) of December 21, 1951,<sup>20</sup> contains the following provisions:

"Sec. 27. If according to the present law, comestibles or jars, bottles and containers or cartons in which comestibles are sold, are to be marked with some information or inscription, the information or inscription shall be placed on the food or package or label in a clear, conspicuous and durable manner.

"Sec. 28. If the packaged comestibles are sold in retail shops the packages shall be marked with the following information:

"1. name of contents;

"2. name, firm, and residence of manufacturer, packager, and seller;

"3. weight of contents at time of packing.

"If the contents are liquid, the volume shall be marked.

"The gross weight shall not be given on the package.

"Sec. 29. If comestibles are packed abroad, instead of the information stipulated in Section 28, point 2, the name, firm, and residence of the exporter and importer may be marked.

"Sec. 30. The provisions of Sections 28 and 29 do not apply to liquor, wine and soft drinks.

"Information according to section 28 is not required:

"1. if the contents weigh less than 100 grams or more than 10 kilograms;

"2. if the comestibles are packed at the place of sale or in a special packing room in the same shop;

"3. as to bread, sandwiches, fresh fruit, vegetables and other fresh food in solid shape, if the articles are packed in transparent paper or some other transparent material.

"Instead of the information required in Section 28, point 2, butter and margarine may be marked with the mark of origin according to instructions of the State Agricultural Agency.

"Sec. 31. If saccharine or other artificial sweetening is used in preparing or presenting comestibles, the package shall be marked "includes saccharine" or "includes artificial sweetening." This provision shall not apply to the goods mentioned in Section 30, paragraph 2, point 3, or to bread and other bakery products.

"Sec. 32. The packages or labels on packages of food especially adapted for children or persons requiring special food due to illness, weakness or other reasons shall list all the ingredients used in preparing the food.

"Sec. 33. Packages, labels, or advertisements of food articles which are not under special stricter control by Swedish government agencies but only under usual control, shall not be marked as being under the control of government agencies."

<sup>20</sup> Ibid., B 1217-1239.

According to chapter 8 of the present law some special requirements in addition to the general provisions are enforced for the following packaged foods: Milk, cream, butter, cheese, margarine, ice cream, meat, seafood, eggs and powdered eggs, grain, sugar, honey, juices, jams and preserves, fruit, vegetables, mushrooms, and vinegar.

According to section 109, point 9, " \* \* any person who sells packaged food, if the package is not of the prescribed quality or is not marked in the manner prescribed by this law" shall be punished by a fine.

#### B. EXPORT GOODS

According to the Law on the Prohibition to Import Goods with any False Marking of Origin (*Lag ang. förbud mot införsel till riket varor med oriktig ursprungsbeteckning*) of June 4, 1913,<sup>39</sup> it is prohibited to import into Sweden goods the marking of which gives the impression that they are manufactured in Sweden. The imported goods must be marked "imported" or in some other way show that they are not Swedish, and have other information prescribed by law on their labels.

#### C. DRUGS

Many laws and royal decrees are enforced in regard to drugstores and the sale of drugs therein. The general law in force is the Law on Drugs (*Apotekslagen*) of November 14, 1913.<sup>40</sup> According to section 10 of this Law:

"Drugs (*apoteksvära*) on sale must be clearly and correctly marked with information concerning the nature of the drugs and its composition, on an inscription or declaration attached to the commodity."

Drugs are under the supervision of the Royal Medical Board.

#### D. MEASURES OF PRIVATE ORGANIZATIONS<sup>41</sup>

There is no Government control over the advertising of goods and no special laws are enforced in this field. The Swedish Advertising League (*Svenska Reklamförbundet*) is a private organization generally recognized by businessmen. This organization has established general advertising principles, keeping in mind the interests of businessmen as well as of consumers. The organization has successfully fought against the misuse of advertising. Advertising of goods in Sweden has developed "informational advertising" through which consumers receive reliable information on goods, their qualities, prices, etc.

As mentioned above, no legal provisions were found on packaging and labeling except for food and drugs. Various governmental committees, as well as organizations of businessmen and consumers, consider it extremely desirable for other commodities to have on their labels and packages all the information necessary for customers. The commodities should be furnished with trademarks, the name of producer and dealer, and a special declaration about the quality, etc. On the other hand it is considered impractical to enact special laws or royal decrees in this field, and that it is preferable to have such measures taken voluntarily in order to satisfy the interests of both merchant and consumer.

A special agency (*Varudeklarationsnämnd*) was established in 1951 by central organizations of merchants and consumers consisting of members appointed by these organizations, under the chairmanship of a person appointed by the King. The task of this agency is to see that other commodities besides food and drugs are voluntarily furnished with all requisite information on their labels, packages, or containers.

#### F. SWITZERLAND

Scattered provisions in a number of Swiss federal statutes safeguard the consumer's interests from being adversely affected by deceptive, misleading, fraudulent, and unfair trade practices in packaging and labeling, as well as in branding and advertising goods and services to consumers. The bulk of the legislation con-

<sup>39</sup> Ibid., p. B 180-183.

<sup>40</sup> *Svensk Författningssamling* (Swedish Official Gazette), 1913, Law No. 308.

<sup>41</sup> *Kvalitetsforskning och Konsumentupplysning* (Exploration of Quality and Information for Consumers), Ch. 3. *Staten Offentliga Undredningar* (Government Investigations) No. 16, Handelsdepartementet, Stockholm, 1949: 70-128. *Pris och prestation i handeln* (Price and Performance in Trade), ch. 3, SUO 1955: 68-79.

cerning packaging, containers, branding, and labeling forms a part of the laws and regulations pertaining to the marketing of foodstuffs, drugs, and other commodities.

The basic legislative act is the Federal Law Concerning the Trade in Foodstuffs and Articles for Everyday Use of December 8, 1905, as amended.<sup>4</sup> Its provisions are further implemented by the Regulation on the Trade in Foodstuffs and Articles for Everyday Use of May 26, 1936, as amended,<sup>5</sup> containing, in addition to general provisions (secs. 1-38), also detailed regulations concerning a large number of individual foodstuffs and other commodities (secs. 39-486).

The law of December 8, 1905, provides for the means of supervising the trade in all foodstuffs as well as in articles for daily use and consumption "to the extent that they may endanger life or health."<sup>6</sup>

Although the main purpose of the Foodstuffs Law of 1905 is the protection of public health, it is also directed against deceptive practices in the trade in the above-mentioned articles. This follows from paragraphs 1, 2, and 5 of section 54 of the law which have the following wording:

"Sec. 54. (1) The Federal Council shall issue the necessary regulations for the protection of health and the prevention of deception in the trade in merchandise and objects which are subject to the provisions of the present Law.

"(2) It shall decree the marketing of the foodstuffs in such a manner as to make impossible deception concerning their nature and their origin.

"(5) It may prohibit the manufacturing and the sale of natural foodstuffs mixed with food substitutes, by means of which a deception of the buyer takes place, insofar as such deception cannot be prevented by any other method."

The Regulation on the Trade in Foodstuffs and Articles of Everyday Use of May 26, 1936, includes several general provisions directed against deceptive trade practices. These provisions are broad enough to cover also deceptive packaging and labeling. The basic requirement for the marking of foodstuffs is stated in section 13, paragraph 1, of this regulation which reads: "Foodstuffs must be marked according to their generic character or their raw products (generic marking)." As a general rule this generic marking has to appear in clearly discernible and legible letters on merchandise samples, as well as on ready packagings (wrappings, containers, etc.) destined for the retail trade.<sup>7</sup>

Where fancy advertising names are used together with the generic marking on packages destined for the retail trade the inscriptions must be of such a nature that the generic marking appears simultaneously on the packaging along with the fancy name and in a clearly visible and legible form.<sup>8</sup>

According to section 320(3) of the *Lebensmittelverordnung* the provision of section 13, paragraph 3, does not apply to fancy packagings and confectionery boxes. But another special provision (sec. 320(4)), which regulates the trade in chocolate bars, was included in the regulation with the express purpose of protecting the buyer from deception. This provision reads:

"Chocolate bars or blocks with a net weight of over 40 grams, if offered for sale separately or in several combined pieces, may be sold or offered for sale only in bars or blocks with the net weight of 50, 100, 125, 150, 200, 250, and 300 grams or more. In-between weights are prohibited (as amended according to the Decision of the Federal Council of April 19, 1940)."

Furthermore, the regulation provides in its section 320(6) that the weight indication must appear on the package in figures at least 0.5 cm. high.

In a Swiss Federal Court case<sup>9</sup> the provision of section 320(4) was challenged by the owner of a Swiss chocolate factory, which had been fined for a violation of this provision. The factory had manufactured and offered for sale packages consisting of two chocolate bars weighing 37 and 40 grams respectively. The following inscription appeared on the wrapping of these packages: "Two bars at 37-40 g=77 g 50 cts including paper filler (100 g=65 cts)." The court

<sup>4</sup> *Bundesgesetz betreffend den Verkehr mit Lebensmitteln und Gebrauchsgegenständen vom 8. Dezember 1905—Bereinigte Sammlung der Bundesgesetze und Verordnungen 1848-1947*, vol. 4 (Bern, 1950), pp. 459-468. Quoted hereafter *Lebensmittelgesetz*.

<sup>5</sup> *Verordnung über den Verkehr mit Lebensmitteln und Gebrauchsgegenständen vom 26. Mai 1936—ibidem*, vol. 4, pp. 499-507.

<sup>6</sup> Section 1 of the *Lebensmittelgesetz*.

<sup>7</sup> Sec. 13, par. 2 of the *Lebensmittelverordnung*.

<sup>8</sup> Sec. 13, par. 3, op. cit.

<sup>9</sup> Decision of the Appeals Division of Cassation of the Federal Supreme Court of Apr. 7, 1949, *Health Agency Mellen v. Ellenberger—Entscheidungen des Schweizerischen Bundesgerichtes*, vol. 75, pt. 4, 1949, pp. 76-82.

of first instance acquitted the owner and held that the Federal Council had no jurisdiction to enact the provision of section 320(4) because its purpose was not an economic police measure but rather a measure of economic policy.

The Federal Supreme Court reversed the decision of the lower instance and ordered the lower instance to impose a fine on the owner. It held that the provision was legally passed in the exercise of the police power, because its purpose was to protect the buyer from deception. Weight differences of 25 or 50 grams, said the court, are easier to discern from the size of the bar or block of chocolate than are smaller differences. A dealer is not prohibited to sell together two pieces of chocolate weighting 37 and 40 grams respectively for 50 [Swiss] cents; however, he may not offer them combined in one package which could create the impression in the buyer that he is buying a single bar of the usual size of a bar of 100 grams. A buyer is deceived at the moment when he considers one bar to be of the same size or weight as another, although one weighs several grams less than the other.

Misleading information on the nature, origin, amount, or weight of packaged goods is expressly prohibited by section 15, paragraph 1, of the Regulations which reads:

"Markings, data, illustrations, packagings, and inscriptions on packagings as well as types of display used for foodstuffs must not lend themselves to deception concerning the nature, origin, amount, weight, etc. of the respective foodstuffs."

#### PENAL PROVISIONS

The original version of the Foodstuffs Law of December 8, 1905, provided in its sections 36 and 37 for penalties for the falsification of foodstuffs and the marketing of falsified foodstuffs. These two sections were later repealed and at the present time section 153 (Falsification of Merchandise) and section 154 (Marketing of Falsified Merchandise) are applicable to any merchandise, including foodstuffs.<sup>48</sup> The penalties range from a fine to imprisonment in the case of an intentional offense. The negligent marketing of falsified merchandise is punished only by a fine, but if such marketing or falsification is done as a trade, the penalty may not be less than 1 month's imprisonment coupled with a fine.

The intentional violation of regulations implementing the Foodstuff Law of 1905 imposes a penalty of custody for not more than 3 months or a fine of up to 1,000 Swiss francs; unintentionally committed offenses are punished only by a fine.<sup>49</sup>

Prior to the adoption of the Swiss Federal Criminal Code of 1937 (effective January 1, 1942), a number of criminal codes of the individual cantons included sections penalizing the use of deceptive markings on merchandise, or the deceptive packaging of merchandise. This offense was considered a minor one and entailed punishment by a fine. An example of these provisions is section 232(4) of the Criminal Code of Bern, which reads as follows:

#### "SECTION 232(4) OF THE CRIMINAL CODE, CANTON OF BERN"<sup>50</sup>

"Whoever, for the purpose of deception in the trade or in commerce falsely or equivocally indicates the nature of a foodstuff on a label or inscription, or in a public notice, or by the type of packaging or in any other manner, shall be punished by a fine of from 5 to 500 francs."

<sup>48</sup> Dr. Karl Dürr. *Kommentar zum eidgenössischen Lebensmittelgesetz nebst Verordnungen*. Bern, Aretusa-Verlag, 1953, p. 22.

<sup>49</sup> Sec. 41 of the *Lebensmittelgesetz* reads as follows:

"(1) Whoever contravenes the regulations issued in implementation of Sec. 54 shall, unless the provisions of Secs. 36, 37, and 38 are applicable against him, be punished by custody for not more than three months or by a fine of up to 1,000 francs.

"(2) If the contravention is committed by negligence he shall be punished by a fine of up to 500 francs."

Secs. 36 and 37 have been repealed. Sec. 38 punishes the manufacturing, offering for sale, or marketing of articles for consumption or daily use, the consumption or use of which endangers health or life, by imprisonment for not more than 2 years and a fine of up to 3,000 francs if the offense is committed intentionally; these offenses committed by negligence entail imprisonment for not more than 6 months and a fine or only imprisonment.

<sup>50</sup> *Strafgesetzbuch für den Kanton Bern vom 30. Januar 1866*. Commented 2d edition by Carl Stooss. Bern, 1896, p. 94. Similar provisions were known to the cantonal legislation of Appenzell, Basel-Stadt, Zürich, and Thurgau. See Esser, Gottfried, *Die Vergehen des eidg. Lebensmittelgesetzes von 8. Dezember 1905* (Diss.) Zürich, Muri Steinmann, 1927, pp. 9-10; Capaul, Durl. (*Strafrechtliche Fragen zur Weinfälschung* (Diss.).

A special case of deception in the trade-in products is the forging or counterfeiting of a trademark. The Swiss Trademark Protection Law provides that the deceived buyer or the owner of the mark (sec. 27(1)) may sue in civil or criminal court "anyone who counterfeits or imitates the trademark of another in such a manner that the public is misled" (sec. 24(2)).<sup>51</sup> The punishment inflicted upon the offender is a fine of from 30 to 2,000 francs or imprisonment for from 3 days to 1 year or both. In case of recidivism these penalties may be doubled. Proof of negligence exculpates the offender (sec. 25).

Another provision of Swiss law which could apply to deceptive information on labels or packages is section 2(b) of the Federal Law against Unfair Competition of September 30, 1943, which states that a violation of the principles of good faith may be committed by "making incorrect or misleading statements concerning oneself, one's own products, performances or business circumstances." The Swiss Federal Supreme Court has held that this applies also to misleading information on the packagings of merchandise.<sup>52</sup> An offender may be prosecuted on request of persons or associations entitled to file a civil suit against him, and the punishment is a fine or imprisonment.<sup>53</sup>

#### G. THE GERMAN FEDERAL REPUBLIC

Safeguarding the consumer's interests adversely affected by deceptive, misleading, fraudulent, and unfair trade practices in packaging and labeling, as well as in branding and advertising goods and services to consumers, has been effected in the German Federal Republic by provisions in several statutes, some of which date back to the time prior to World War II.

Generally speaking, there are no special statutes directed against unfair labeling and packaging practices as such. However, regulations pertaining to the marketing of specific commodities contain provisions concerning misleading, deceptive, and fraudulent, as well as unfair, trade practices. This is especially true with respect to the marketing of foodstuffs. General provisions prohibiting deceptive, fraudulent, misleading, and unfair trade practices in the trade in foodstuffs and consumer commodities are contained in the Foodstuffs Act of 1936, as amended.<sup>54</sup> The pertinent provision directed against fraudulent trade practices, and prohibiting falsification and adulteration, as well as misleading and deceptive marking, reads as follows:

"Section 4. It shall be prohibited—

"1. to falsify or adulterate foodstuffs for the purpose of deception in trade and commerce;

"2. without sufficient identification to tender, offer for sale, to sell or otherwise place on to the market spoiled, falsified or adulterated foodstuffs; even in case of such identification this prohibition shall apply to the extent inherent in the established regulations adopted pursuant to Sect. 5 No. 5 [of this Law];

"3. to tender, keep in stock for sale, offer for sale, to sell, or otherwise place on the market foodstuffs with a misleading marking [*Bezeichnung*], designation [*Angabe*] or packing [*Aufmachung*]. This shall apply also [to cases] where the misleading identification, designation or packaging refers to the origin [*Herkunft*] of the foodstuffs, the time of their manufacture [*Herstellung*], their quantity, their weight or other circumstances which are contributing factors to their evaluation."<sup>55</sup>

<sup>51</sup> *Bundesgesetz betreffend den Schutz der Fabrik- und Handelsmarken, der Herkunftsbezeichnungen von Waren und der gewerblichen Auszeichnungen von 26. September 1890—Bereinigte Sammlung*, vol. 2, Bern, 1949, pp. 845-856; David Heinrich, *Kommentar zum schweizerischen Markenschutzgesetz*, Basel, Helbing & Lichtenhahn, 1940, pp. 251-260. See also Glözendanner, *P. Streifzug durch das Reklamerecht*, Zürich, 1953, pp. 51-52. ment or a fine.

<sup>52</sup> Decision of Oct. 19, 1912. *Riegler v. Zuban, Entscheidungen des Schweizerischen Bundesgerichtes*, vol. 38, pt. 2, pp. 566-572. This decision was quoted in a recent Swiss commented edition of the Unfair Competition Law—Büren, Bruno von. *Kommentar zum Bundesgesetz über den unlauteren Wettbewerb vom 30. September 1943*. Zürich Schultheiss, 1957, p. 75.

<sup>53</sup> Sec. 13 of the Law on Unfair Competition.

<sup>54</sup> *Gesetz über den Verkehr mit Lebensmitteln und Bedarfsgegenständen (Lebensmittelgesetz)* [Law Concerning the Trade in Foodstuffs and Consumer Commodities (Foodstuffs Act)] of Jan. 17, 1936 (*Reichsgesetzblatt*, 1936, I, p. 17), as amended Aug. 14, 1943 (*ibidem*, 1943, I, p. 488) and Dec. 21, 1958 (*Bundesgesetzblatt*, 1958, I, p. 950).

<sup>55</sup> Translated from the most recent compilation of the food laws of the German Federal Republic: *Lebensmittelrecht. Bundesgesetze und -verordnungen über Nahrungs- und Genussmittel*. 3d ed. München und Berlin, Beck, 1961 566 pp., at pp. 1-24. (Quoted hereafter: *Lebensmittelrecht*. 1961.)

Section 5 of the same law authorized the Minister of the Interior to issue jointly with the Minister for Food and Agriculture implementing regulations concerning specific kinds of food products and commodities. Numerous regulations were issued in the years following.<sup>60</sup>

Sections 11 and 12 of the Foodstuffs Act of 1936 provide for penalties ranging from a fine to imprisonment and in serious cases even to confinement in a penitentiary up to 10 years. The federal ministers concerned<sup>61</sup> shall establish which markings, designations, or packagings, being misleading, shall come within the purview of the prohibitions specified in section 4(3) of the Foodstuffs Act of 1936.<sup>62</sup> The Ordinance Concerning the Exterior Marking of Foodstuffs of May 8, 1935, as amended,<sup>63</sup> makes it mandatory for the manufacturer or the person importing certain food products from abroad (*Zoll-Ausland*) to place external markings on the packages and containers intended to be offered for sale, sold, or otherwise placed on the market.<sup>64</sup> Whoever wishes to place on the market a foodstuff under his name or the name of his firm, has the duty to supply the markings, and the manufacturer as well as the importer have no duty to do so. The ordinance enumerates the food products which are subject to the mandatory requirement of external marking (*Kennzeichnungspflicht*) to the extent they are delivered to the consumer in packages or container (sec. 1). It furthermore provides that certain data<sup>65</sup> must appear on the packages or containers at a conspicuous place, in German and in clearly discernible and easily legible writing.<sup>66</sup> These provisions are enforced also with respect to food products imported from abroad.<sup>67</sup> The Ordinance Concerning Price Marking of November 16, 1940, as amended April 6, 1944, is also pertinent to this study. In the German Federal Republic the interests of the consumer are safeguarded also by means of imposing upon retailers the duty to provide price markings on the articles for sale. A translation of the pertinent provisions of the Ordinance Concerning Price Marking of November 16, 1940, as amended April 6, 1944<sup>68</sup> follows:

#### "SECTION 1

"(1) Whoever, as a retailer, or in some other manner, sells goods in the retail trade, shall have the duty to provide these goods with the required price markings. The marking has to designate the kind and quality [*Gütebezeichnung*] customary in the trade, as well as the standard sales unit [*Verkaufseinheit*] customary in the trade.

"(2) the provision of Par. 1 applies respectively to all goods which are offered [for sale] by retailers or in some other manner in the retail trade according to pattern books [*Musterbücher*].

#### "SECTION 10

"(1) Price markings must be clearly legible;

"(2) Price labels (*Preischilder*) may be written upon only one side, or bear the same text on both sides.

\* \* \* \* \*

"The Federal Minister of the Economy of the German Federal Republic has in a recent letter (*Schreiben*) of March 22, 1961,<sup>69</sup> referred to section 1 of the Price

<sup>60</sup> For a list of these regulations see Ettmeyer, Werner. *Juristischer Wegweiser für Wettbewerb und Werbung*. Nürnberg, K. Böhrer, 1952, p. 91; the most up-to-date collection of the texts of the regulations appears in *Lebensmittelrecht*, 1961, pp. 71-458.

<sup>61</sup> At the present time this authority is exercised by the Federal Minister of the Interior jointly with the Federal Minister for Food, Agriculture and Forests—*Lebensmittelrecht*, 1961. P. 6, note 2.

<sup>62</sup> Sec. 5(5) of the Foodstuffs Act of 1936.

<sup>63</sup> *Verordnung über die äussere Kennzeichnung von Lebensmitteln (Lebensmittel-Kennzeichnungsverordnung)* vom 8. Mai 1935, as amended Apr. 16 and December 1937, Mar. 16, 1940, and December 19, 1959—*Lebensmittelrecht*, 1961, pp. 64-68.

<sup>64</sup> *Lebensmittel-Kennzeichnungsverordnung*, sec. 1 (2) and (3).

<sup>65</sup> The name of the firm and the seat of the main industrial establishment of the manufacturer; an indication of the contents according to commercial custom as well as according to German weights or measures at the time of the packaging, or by the piece.

<sup>66</sup> Sec. 2 (1) or the Ordinance of May 8, 1935.

<sup>67</sup> Sec. 4. *Ibidem*.

<sup>68</sup> *Verordnung über Preisauszeichnung vom. 16. November 1940 in der Fassung vom 6. April 1944*—*Reichsgesetzblatt*, 1944, I, pp. 97-100.

<sup>69</sup> Published in the official gazette of the Ministry of the Economy of the Land Baden-Württemberg—*Amtsblatt des Wirtschaftsministeriums Baden-Württemberg*, 1961, pp. 23 ff.—I B 8 1048/61. This information has been obtained from *Rechtsarchiv der Wirtschaft. Steuer- und Rechtsfragen in Kursberichten*. Richard Boorberg Verlag, Stuttgart-München-Hannover, vol. 14, issue No. 11 (June 10, 1961), item 267, pp. 353-354.

Marking Ordinance and has ruled that in all cases of the sale of packages with a filling weight that is not even (*ungerades Füllgewicht*), e.g., 315, 430, 460, etc., grams, the markings on the package must include also the price for the weight unit customary in the trade. For items sold by weight, as a rule one-half kilogram or 500 grams shall be the basic weight unit customary in the trade. Consequently, markings of 100 grams, 125 grams, or 250 grams shall be considered units customary in trade. However, this general rule applies only to articles for daily use. In the case of branded goods—mainly delicatessen or cosmetic articles—under certain circumstances the uneven weight (*krummes Gewicht*) would be also considered customary in the trade. Furthermore, it was ruled that all weight markings shall refer to net, rather than gross, weight because in the opposite case the consumer would be at a disadvantage. But in the case where the weight of the packing material is substantial with respect to the weight and the price of the merchandise, a double marking indicating the net and gross weight shall be required.<sup>22</sup>

#### H. SOVIET UNION

The Soviet Union enacted several decrees dealing with the labeling of goods for the purpose of safeguarding the consumer's interests. In general, all enterprises producing spices or goods for mass consumption must obtain in advance the approval for their labels, naming of goods, etc., from the proper authorities.

The new Criminal Code of October 27, 1960, in force since January 1, 1961, provides severe penalties for the deception of customers.

The translation of the pertinent decrees and provisions follows.

#### TRANSLATION FROM RUSSIAN

#### "APPROVAL OF LABELS ON GOODS

"Decree No. 1233 of the People's Commissar of Internal Commerce of November 16, 1935

"The Government Commerce Inspectorate attached to the People's Commissariat of Internal Commerce of the U.S.S.R. has found cases in which industrial enterprises, when putting their products on the market for consumers at large, have put on their goods labels of other enterprises or labels which are, in appearance, identical with or similar to labels of other enterprises, or have included false information in the inscriptions on their labels.

"For instance, in the Western Province, the *artel* of Roslav, of the Food Industry Union "Ob'edinnnoi konditer," purchased a large number of labels of other enterprises (Mosel'prom, Lensei'prom. etc.) in the city of Gomel and used them as wrappers for their own candy products; and a Moscow *artel* used labels with the inscription "Export Vinegar" on their vinegar bottles, although their product was not of this kind. Pointing out that the above-mentioned and similar cases which deceive the consumer are intolerable under the conditions of Soviet trade and should be stopped immediately, the People's Commissar of Internal Commerce of the U.S.S.R. establishes the following:

"1. All enterprises are absolutely prohibited to market goods packaged with labels which could deceive the consumer either in regard to the producer or quality of the goods by using labels of other enterprises or labels identical or similar to those of other enterprises, or by including on the labels false information regarding the quality, origin or purpose of the goods.

"2. It is the duty of all enterprises which put out goods with labels, to obtain in advance approval of such labels from the higher organization under which they operate.

"3. In cases in which the labels used by enterprises either belong to other enterprises or, in appearance, are identical or similar to the labels of other enterprises, or contain information which could deceive the consumer, the local organs of the Inspectorate of Government Commerce attached to the People's Commissariat for Internal Commerce of the U.S.S.R. shall initiate action for the prosecution of delinquents using such labels. [*Organizatsiia i pravila roznichnoi torgovli* (Organization and Rules of the Retail Trade) comp. by K. Grichik, K. Grave and V. Pirkovski, Moscow, 1936, p. 241.]

<sup>22</sup> Ibidem, p. 354.

**"PROCEDURES TO ESTABLISH THE NAMES OF SPICES AND GOODS OF MASS CONSUMPTION"**

**"Decree No. 1403 of the People's Commissar of Internal Commerce of the U.S.S.R. of December 16, 1935"**

"In order to establish uniform procedures for the naming of spices and goods of mass consumption and to establish control so that the names will correspond with the purpose and requirements of the cultural Soviet trade, the People's Commissar of Internal Commerce of the U.S.S.R. has established:

"1. All enterprises producing spices or goods of mass consumption shall, when they put out new goods or change the names of existing goods, obtain the approval of the proper people's commissariat or of the chairman of the provincial (land) cooperative center before forwarding the new goods or renamed goods for sale.

"Note 1. The proceedings for submitting new names for approval shall be established by the proper commissariat or by the center of cooperatives.

"Note 2. Putting spices and goods of mass consumption with new names on price lists, prospectuses, announcements, etc. as well as forwarding them for sale before the names have been approved in the above-established way shall be prohibited.

"2. In examining the proposed new names of goods for approval, the following shall be taken into consideration:

"(a) the name shall correspond to the contents of the goods as much as possible;

"(b) the name, in its literal sense, shall not be out of keeping with this period of time (for example, goods should not be given the names of people who are enemies of labor or names which recall the former owners of the enterprise, etc.);

"(c) the name shall not deceive customers as to the quality, period of time of usage, purpose, etc., of the goods.

"3. In all cases in which the names of goods fail to conform to the provisions of Section 2 of the present Decree, the local organ of the People's Commissariat of Internal Commerce shall immediately inform the People's Commissariat of Internal Commerce of the U.S.S.R. (Division of Rules and Norms of Trade) so that these names may be re-examined.

"[Ibid. p. 241-242.]

**PROHIBITION TO GIVE THE DESIGNATION TEA TO VARIOUS BEVERAGE SUBSTITUTES**

**Decree No. 122 of the People's Commissar of Internal Commerce of February 25, 1935**

"Due to the fact that various beverage substitutes (having the flavor of red bilberries, raspberries, fruits, etc.) have been put on the market bearing on their wrappings or labels the words 'tea' or 'used as tea,' etc., the word 'tea' being in heavy type, the People's Commissar of Internal Commerce of the U.S.S.R., has established:

"1. It shall be prohibited to sell tea substitutes with labels bearing the words 'tea' or 'used as tea,' and in general inscriptions which are intended to conceal the contents of the substitute beverage.

"The use of the name 'tea beverage' for the substitute if the word tea is not in heavy type shall be permitted.

"2. All commercial enterprises and organizations shall, within two months from the publication of the present Decree, be obliged to take off the market all substitutes with deceiving wrappings or to change erroneous inscriptions, and put on a new one which indicates that the beverage is a substitute.

"3. Two months after the publication of the present Decree, the Government Commerce Inspectorate at the Commissariat of Internal Commerce of the U.S.S.R. shall immediately inform the prosecution bureau of all cases in which tea substitutes have been put on the market in packages which deceive customers.

"[Ibid., p. 242.]



## "STATUTE ON TRADE-MARKS AND TRADE-SIGNS OF MARCH 7, 1936

## "EXCERPTS

"In order to increase the responsibility of industrial enterprises for the quality of the products they release and to facilitate the customers' selection of the products of enterprises with established reputations, the Central Executive Committee and the Council of Peoples Commissars have resolved:

"1. All enterprises of governmental industries, producers' *artels* (co-operative associations) and cooperatives of invalids, as well as enterprises of public organizations, shall attach to their products trade-marks which indicate:

"(a) the full or abbreviated name of the enterprise;

"(b) its location;

"(c) the full or abbreviated name of the people's commissariat, central bureau, or co-operative center under which the enterprise operates;

"(d) the grade of goods and the number of the standard.

"Note. A list of enterprises and goods which do not require trade-marks shall be issued by the Council of Labor and Defence.

"2. The trade-mark may be affixed on the goods themselves, or its wrapping or attached to the label on the goods.

"3. Release of goods without trade-marks makes the director of the industrial enterprise reliable to prosecution in a disciplinary or judicial procedure.

"4. Enterprises, in order to make their produce [d goods] distinctive have the right to provide, in addition to the mandatory affixture of the trade-mark, a permanent original distinctive sign (trade signs) such as: a graphic design, an original name, a particular combination of numbers or words, original packaging, etc.

"Individual large enterprises may be granted the right by the people's commissariat under which they operate to affix on products a trade-sign instead of a trade-mark consisting in its original design of only the name or initial (monogram) of the enterprise, the kind of goods and the number of the standard.

"A list of goods which shall be provided with trade-signs shall be established by the People's Commissar of Internal Commerce for products of mass consumption designated for the internal market and by the People's Commissar of Heavy Industry for machines and equipment.

"5. The registration and usage as trade-signs of the following shall be prohibited:

"(a) signs which are insufficiently distinct from the signs of the other enterprises registered with the U.S.S.R.;

"(b) signs which contain certain false or deceiving information;

"(c) signs which contain a red cross or a red half moon.

\* \* \* \* \*

"10. Trade-marks for all kinds of goods shall be registered with the U.S.S.R. Ministry of Commerce (as amended on March 4, 1940).

"(*Sobrainie Zakonov i Rasporiazhenii*, 1936, No. 13, item 113.)

## "ARTICLE 156. DECEPTION OF CUSTOMERS

"Fraud in measures, weights, increase of established prices in the retail trade, fraud in counting or any other deception of customers in stores or other commercial enterprises or enterprises of public refreshment shall be punished by confinement for up to two years, or by correctional labor for up to one year, or by deprivation of the right to be an employee in commercial enterprises or public refreshment enterprises.

"The same acts committed on a large scale or by persons who have been previously sentenced for the same crime shall be punished by confinement for from two to seven years with or without confiscation of property, or with deprivation of the right to be an employee in commercial enterprises or public refreshment enterprises.

"(*Ugolovnyi Kodeks RSFSR* (Criminal Code of the RSFSR). Moscow, 1960, p. 78.)"

## I. AUSTRIA

A survey of Austrian legislation did not disclose any specific statutes aimed at unfair labeling and packaging practices. In extreme cases, of course, the provi-

sions governing fraud as contained in the Austrian Criminal Code<sup>17</sup> would be applicable. On the other hand, a number of provisions are scattered throughout various laws and decrees, which may be used, under certain conditions, to combat misleading, deceptive, and fraudulent trade practices in the marketing of food products and the sale of goods.

For many decades the basic legislation and most of the decrees issued thereunder were enacted on the basis of a law which was passed over 60 years ago primarily in the interest of the protection of the population's health and to introduce provisions making misleading, deceptive, and fraudulent trade practices punishable as petty offenses or minor crimes depending on their gravity. This basic law is the Law on Foodstuffs (*Lebensmittelgesetz*) of January 16, 1896 (*Reichsgesetzblatt* (Collection of Laws), hereafter abbreviated RGB1, No. 89 of 1897). Though the question of amendments was brought up on several occasions, no changes occurred during the following decades until 1938 when the Austrian Republic, established in 1918, ceased to exist. During the Nazi regime, German laws replaced the Austrian legislation previously in force on the subject. After the collapse of the Nazi Reich, the text of the law of 1896 was published anew, with some modifications, by the Proclamation of the Federal Government of October 2, 1951,<sup>18</sup> as the Law on Foodstuffs (*Lebensmittelgesetz*). Amended slightly in 1960 by the Federal law of November 28, 1960, No. 245,<sup>19</sup> this law is concerned not only with the trade in foodstuffs but also, among other things, with the trade in cosmetics, toys, tapestries, clothing, implements for cooking or storing foodstuffs or using the same, as well as scales, measures, and other instruments employed in the measurement of foodstuffs. Section 6 of the law authorizes the ministries concerned to issue regulations in the interest of health protection while section 7 is designed to protect the consumer from monetary loss and misleading trade practices.<sup>20</sup>

Under these sections the ministries concerned may prohibit or restrict the following activities engaged in as a trade: The manufacture, sale, or offer for sale of objects which are designed for the imitation or adulteration of foodstuffs as well as the sale as a trade and the offering for sale of foodstuffs under a marking not corresponding to their true quality.

Pursuant to this law (primarily based on sec. 7) a number of decrees were issued for the purpose of protecting the consumer from deceptive practices. In almost all instances the common feature was to make certain that a product whose ingredients were known to the public came into the trade and was offered for sale under the known name of the product only when it contained all the ingredients normally expected in the product. Any substitutions or mixtures used in the preparation of the product had to be disclosed.

Such decrees were, for instance, the decree of September 5, 1899 (RGB1 No. 182), concerning malt wines (*Maltoine*) issued by the Ministers of the Interior, Justice, Commerce, and Agriculture.

The decree of April 2, 1900 (RGB1 1900, No. 69, p. 106), made unlawful the sale and offering for sale, both as a trade, of beverages similar to beer in the production of which hops or hop extracts were used under any name than the one which distinctly showed the use of these ingredients.

A similar decree of April 12, 1908 (RGB1 No. 83, p. 714), issued by the Ministers of the Interior, Justice, Finance, Commerce, and Agriculture, dealt with the trade in sugar and stipulated that whenever mixtures of sirup derived from sugarbeets or starch were used, these products could be sold only under this express marking.

The decree of January 30, 1908 (RGB1 No. 23, p. 44), issued by the Ministers of the Interior, Agriculture, Commerce, and Justice, protected the designation of pure cooking oil (such as olive oil).

Another decree intended for the protection of the consumer against fraud was the decree of December 16, 1922 (RGB1 1922, No. 925, p. 1946), issued by the Federal Minister for Social Administration in consultation with the other Ministers concerned prohibiting the manufacture, trade, and offering for sale as a business of substances designed for the adulteration of foodstuffs.

<sup>17</sup> *Das österreichische Strafgesetzbuch* (1945) \* \* \* herausgegeben von Gustav Kaniak. 5th ed. Vienna, Manz, 1960. Secs. 197 et seq.

<sup>18</sup> *Bundesgesetzblatt* (hereafter abbreviated BGB1), 1951, No. 239, pp. 913 et seq.

<sup>19</sup> BGB1 1960, p. 2177.

<sup>20</sup> See H. Frenzel, *Das novellierte österreichische Lebensmittelgesetz 1960*. Vienna, Osterr. Stattsdruckerel, 1961.

Furthermore, under the new section 7a the Ministry of Social Welfare may, in consultation with the other Ministries concerned, after certain institutions based on public law have been heard, issue regulations setting forth certain conditions which for reasons of public health must be met when selling or offering for sale, producing, manufacturing, processing, marking, packaging, storing, and shipping foodstuffs designated for the trade and commodities subject to the present law.

Sections 9 to 22 deal with violations of the law. Fines of up to 150,000 Austrian schillings<sup>11</sup> or imprisonment, or both, are provided as penalties. In the most serious cases referred to in section 19 even confinement in a penitentiary for up to 5 years may be imposed. However, it should be stressed again that the primary purpose of this law is the protection of the population's health and that noncompliance with the provisions of sections 7 and 7a referred to above constitutes merely a petty offense punishable by imprisonment for up to 1 month or a fine of up to 3,000 schillings, or both. Minor violations of the provisions of the law are now removed from the jurisdiction of the courts and are assigned to the jurisdiction of the local administrative authorities (sec. 22).

The Law of September 26, 1923, BGBI No. 531, against Unfair Competition<sup>12</sup> in the version of Federal laws No. 461 of 1924, No. 192 of 1926, No. 111 of 1936, No. 145 of 1947, and No. 160 of 1952, also contains provisions pertaining to the protection of consumers against deceptive practices.

Section 32 is of special interest in that respect. It reads as follows:

"Sec. 32 (1) It may be ordered by decree that certain commodities can only be sold in the trade, offered for sale, or otherwise placed on the market in prescribed quantity units or with visible marking [*Brandschildmachung*] of the quantity (weight, measure, number), quantity or geographic origin.

"(2) These decrees shall prescribe the manner of affixing as well as the text of the prescribed designation and may also contain regulations as to the date of the affixing and the packaging as well as provisions permitting the deviation or exemption from these provisions [in cases] when the quality of the commodities or special conditions so require [such deviations or exemptions]; finally these provisions may also contain the measures necessary for their inspection and enforcement.

"Whenever the affixing of the designation of the quality on the commodity itself or on its packaging or wrappings is not feasible, it may be decreed that the quality must be indicated in a document accompanying the delivery of the commodity. For the trade in articles of consumption connected with agriculture and forestry it may be prescribed that the name or firm and the place of business of the manufacturer of the commodity must be stated.

"(3) Whenever decrees concerning the use of prescribed quantity units or the visible marking of the quantity are issued with regard to such commodities which, as a rule, due to their natural qualities, suffer losses as to weight or measure, then the limits of deficiencies which may be allowed shall be especially established.

"(4) Furthermore, certain designations may be prescribed, admitted or prohibited by decree in regard to commodities which may as a trade be sold, offered for sale or otherwise placed on the market [only] with the visible marking of the quantity, quality or place of origin.

"The provisions of Subsections 2 and 3 shall, to the extent that they are applicable, also apply to decrees which prescribe a certain designation [or] admit or prohibit the same."

Section 33 in particular provides for penalties incurred for the violations of decrees enacted pursuant to the foregoing section. Fines of up to 500 Austrian schillings and imprisonment for up to 3 months may be imposed. In addition, any designation not included in violation of that section must be added, or misleading designations eliminated; if this is not feasible, confiscation of the commodities may be pronounced. Even if the prosecution or sentencing of definite persons is impossible, confiscation of the commodities involved may be pronounced independently.

Pursuant to the Law against Unfair Competition, particularly as based on section 32 of that law, a number of implementation decrees were issued. The

<sup>11</sup> Increased to this amount by an amendment introduced by the Federal law of July 16, 1952 (BGBI No. 160, pp. 476-477).

<sup>12</sup> *Wettbewerbsrecht*; herausgegeben von Fritz Schönherr, E. Saxl und Karl Wahle. Vienna, Manz, 1959.

Decree Concerning Bottles of July 11, 1953,<sup>75</sup> issued by the Federal Ministry for Commerce and Reconstruction, is of special interest for the protection of the consumer from deceptive practices. This decree, referring to sections 19 and 24 to 26 of the Federal Law of July 5, 1950, on Gauging,<sup>76</sup> prescribes that bottles designed to be filled with liquid foodstuffs may be used only when they meet certain designated standards of measurements as to their rated contents [*Flaschennenninhalt*]. As a rule, liquid foodstuffs may be bottled only in bottles having the following measurements: 2 litres, 1.5 litres, 1 litre, 0.75 litre, 0.7 litre, 0.5 litre, 0.35 litre, 0.25 litre, 0.2 litre, 0.175 litre, 0.125 litre, 0.1 litre. There are a few exceptions admitted, for instance beer may also be bottled in bottles with a rated volume of 0.33 litre.

Detailed regulations pertain to the proper filling of the bottles. Bottles and bottle-like containers subject to the provisions of this decree must be made of glass, porcelain, stoneware, or other material capable of holding its shape. The contents must be expressed in litres. The designation of the rated contents and the sign of the manufacturer, as required by the Law on Gauging, must be placed on the outside of the bottom or the body of the bottle in a distinct and unseverable manner.

A decree of the Federal Ministry for Agriculture and Forestry of November 18, 1954,<sup>77</sup> is designed to combat unfair trade practices in trading in honey and artificial honey.

A decree of January 25, 1955,<sup>78</sup> based on section 32 of the Law on Unfair Competition, was issued by the Federal Ministry for Commerce and Reconstruction for the protection of the consumer buying soap for household use. The decree reads as follows:

"Par. 1. Curd soap [*Kernseife*] within the meaning of this Decree shall be understood to be a household soap only, which, in solid form, contains at least 62 per cent of soap-making sebacic acids of which not more than one fourth may be resin acid.

"Par. 2. Curd soap may be sold, offered for sale, or otherwise placed on the market as a trade in retail commerce only in bars of 100 grams, 200 grams, 250 grams, 400 grams, 500 grams freshweight [*Frischgewicht*]. Loss of weight of not more than 25 per cent of the total weight, which occurred during storage, shall be disregarded.

"Par. 3. The freshweight must be clearly marked in letters of at least 5 mm. in height on the Curd soap or its packaging if it is not transparent. The word 'Freshweight' [*Frischgewicht*] shall precede the statement indicating the weight.

"Par. 4. The present Decree shall take effect as of July 1, 1955."

Another regulation safeguarding the consumer's interest against deceptive and unfair practices is the Decree of September 21, 1953,<sup>79</sup> issued by the Federal Ministry for Commerce and Reconstruction concerning the designation of the place of origin of distilled alcoholic beverages. Under this decree distilled alcoholic beverages, whether sweetened or unsweetened, may be sold in the trade, offered for sale or otherwise placed on the market only in sealed containers, on which the place of origin is designated and the ingredients are stated. The designation [*Bezeichnung*] must be written in German, clearly and ineffaceably, and permanently affixed to the side of the container bearing the label. In addition, in the case of containers having a volume capacity of from 35 centilitres to 1 litre, inclusive, the minimum lettering [size] must be 2 millimeters while on containers of a volume capacity of more than 1 litre the lettering must be at least 5 millimeters in height.

The recently enacted Federal Law of July 6, 1961,<sup>80</sup> governing the Trade in [Grape] Wine and Wine made from other Fruits (referred to as the Law on Wines of 1961) is also designed to protect the public against deceptive, misleading, and unfair trade practices. Section 13 of the law contains provisions pertaining to the designation. It reads as follows:

#### "SECTION 13

"General Provisions Pertaining to the Designation:

"(1) Wine may not be kept ready for sale, be sold or otherwise placed on the market under a designation or form (such as a pictorial representation, shape of a bottle and others) which may be misleading.

<sup>75</sup> BGBI 1953, No. 128, p. 532.

<sup>76</sup> BGBI 1950, No. 152, p. 607.

<sup>77</sup> BGBI 1954, No. 262, p. 1135.

<sup>78</sup> BGBI 1955, No. 28, p. 295.

<sup>79</sup> BGBI 1953, No. 152, p. 572.

<sup>80</sup> BGBI 1961, No. 187, p. 967.

"(2) Whenever, under the provisions of the present law, the use of a designation in written form is prescribed, the lettering shall be clearly legible and of appropriate size. It shall be affixed at a place of the container conspicuous to the purchaser.

"(3) Insofar as the use of a designation is inadmissible, the following shall also be prohibited:

(a) to affix the designation on the containers, the packaging or wrappers in which the wine is being placed on the market or is to be placed on the market." [Remainder of Section irrelevant.]

The law also contains detailed provisions pertaining to the designation of the geographic regions of the various domestic wines and the designation of origin in the case of imported wines.

Austria is also a party to the International Convention for the Use of Designations of Geographic Provenience [*Appellations d'origine*] and Denominations of Cheeses originally signed at Stresa on June 1, 1951, and the supplementary Protocol signed at the Hague on July 18, 1951. Austria acceded to this Convention in 1953." Austria also signed agreements with several countries concerning the protection of designations of geographic provenience and the origin of certain products. An agreement of this type was concluded with Italy on February 1, 1952, protecting the use of Vermouth and other Italian wines on the one hand, and, for instance, several well-known Austrian beers on the other hand (*Gösser Beer*, etc.).

#### J. BELGIUM

The normal conditions of competition in industry and the trades are well established and protected by law. The producers, merchants, and consumers have a right of action in the courts against any dishonest practices or acts of their competitors and misrepresentation to the consumer. (Decree No. 55 of December 23, 1934, *Moniteur Belge* (hereinafter M. B.) of December 30, 1934). The only enactments found which bear most closely on deceptive labeling or packaging practices are the following:

A decree of March 30, 1936 (M. B., April 7, 1936), empowers the King to issue new regulations for their protection in case of need. Within this scope, the Council of Ministers may:

1. establish the composition and the quality of products permitted on the market under a special trade name;
2. prohibit from the market products bearing a particular trademark;
3. impose restrictions and obligations to the effect that certain products must be sold under a particular name;
4. or, in order to establish a better understanding on the part of the consumers, impose a grouping of trademarks under which a particular product may be permitted on the market; special labeling or signs; special words or phrases.

Certain products of everyday use have to comply with the specific composition as stated in the law, before they can be placed on the market. Other products must be described and identified by special words to prevent a misrepresentation to the public of the product.

Examples:

##### A. Use of names

A circular letter of September 1, 1952 (M. B. of September 1, 1952), regulates the names of some of these products as stated in the decree of January 13, 1935:

"Art. 1. The name 'cloth' or 'genuine thread' cannot be used except when it is followed by a designation of the raw material used for the fabric.

"Art. 2. The words 'linen cloth,' 'genuine thread linen,' 'fine linen,' 'batiste' are specially reserved for textile fabrics which are entirely composed of linen."

##### B. Use of phrases

"Made by hand" in the shoe industry is regulated by the decree of March 6, 1935 (M. B., March 22, 1935); "natural cement," "Roman cement," etc., is regulated by the decree of April 14, 1935 (M. B., March 20, 1935); "wool" by the decree No. 332 of May 7, 1936 (M. B., May 22, 1936); "slik" by the decree of March 22, 1937 (M. B., August 1, 1937); etc.

\* BGBI 1955, No. 135 of 1955, p. 647, and No. 136 of 1955, p. 662. BGBI 1954, No. 235, p. 1057.

**Mr. JARMAN.** I have other questions, Mr. Chairman, but I will hold them for a moment.

The **CHAIRMAN.** Mr. Devine?

**Mr. DEVINE.** Mr. Chairman, I would like to direct my first question to Secretary Connor.

For the small manufacturer who sells his product solely within a State, engaged solely in intrastate business, would he be affected by this act, in your opinion?

**Secretary CONNOR.** The definition of commerce, Congressman, is given in the bill, and it is my understanding that purely intrastate transactions are not covered. I would like to check that.

Yes, that is correct.

**Mr. DEVINE.** Suppose he sells bakery goods. Would his sales affect the national bakery products and thereby have an impact on the interstate commerce transaction of those goods?

**Secretary CONNOR.** It would have some impact on the sales of competitive products that move in interstate commerce, but the bill as now drafted would not intend to cover that kind of transaction.

**Mr. DEVINE.** I believe the Supreme Court is making broader and broader interpretations of the commerce clause, even as it relates to the title IV housing provision of the Civil Rights Act before the House today. I think they have suggested a private home is in interstate commerce because the building materials, such as nails, crossed the State lines.

Don't you think this would be subject to a broad interpretation, too?

**Secretary CONNOR.** Mr. Devine, it is always possible, of course, for the Court to expand the definition of commerce. But as used in this bill, we would not anticipate that a transaction comparable to what you describe would be covered.

**Mr. DEVINE.** Just for the purpose of argument, let's assume this does affect my bread and bakery manufacturer in my district. The cost of complying with the bill would seriously affect him.

Is there any relief provided under the terms of this bill?

**Secretary CONNOR.** The relief would be that there would be no attempt to enforce the provisions of this bill by the Federal authorities against such a local manufacturer.

**Mr. DEVINE.** Thank you, Mr. Secretary.

Now, Mrs. Peterson; in prior appearances on this legislation before the Senate committee, you cited instances where the industry has made its own changes with regard to practices. However, you said that legislation is still necessary to do a complete job to correct the practices.

I think you also were in favor of earlier versions which prohibited all cents-off promotions. Then I think you modified your position to allow some cents-off promotions, depending upon whether they were deceptive or not.

My question is whether or not it would be better to tighten up the existing laws on deceptive practices rather than saddle the industry with a whole new set of laws which would raise manufacturing costs?

**Mrs. PETERSON.** I think the question as to whether or not the law should be tightened would be something that Mr. Dixon and Mr. Cohen should answer. But the fact, as far as consumers are concerned, is that the laws evidently are not adequate.

Again, all we would have to do is take the trip along the supermarket shelves to see that this is the case. I certainly feel that the laws on the books should be used to the fullest, but I feel that they are not adequate because they generally require action on a case-by-case basis.

I do want to say, as I said before, that a great deal has been done to improve packaging and labeling practices. I am so pleased when I walk along the supermarket aisles and people say, "Look at this package. It is full and labeled clearly on the front." I do compliment the industries that have made voluntarily many, many changes, and I am fully aware of them.

But nevertheless, to have the authority to make regulations to correct misleading and confusing practices—because there are still plenty of abuses on the shelves—is important. I think the bill is necessary in order to do that.

Relative to the "cents off," I feel very strongly, after I have talked with a number of the industry people, that very often there are cases where there were legitimate reasons given to show that the manufacturer's reduction had been passed on by the retailer to the consumer. Therefore, I did agree that it would be better to move the "cents off" provision into the discretionary part of the bill.

This change reflects a real effort to assure that everything is done to be positive that legitimate cost reductions are possible. The difficulty with "cents-off" is, of course, as I tried to point out yesterday, that it does promise something from the manufacturer that he cannot guarantee will be delivered.

Studies show that people generally think that "cents-off" means a bargain. In one of the polls in which consumers were asked, "When you pick up a 'cents off,' do you think you are getting a bargain?", most people said they thought they did. But, you know, we are believers in this country—and I think that it is good—that we should be able to feel that if the label says it is a bargain, it is a bargain. But the disillusionment comes when we find that it is not so.

It is unfortunate when people must say, "This is not a bargain. I am paying a lot more for this implied bargain." Therefore, what we were trying to do was to be sure that we let good bargain practices go ahead, but to be sure that the abuses are eliminated.

Mr. DEVINE. You testified that you received literally thousands of letters in your office, but do you have any surveys that you have conducted that would reveal that companies, to compete, indulge in questionable practices?

Mrs. PETERSON. I think there have been many surveys made by many marketing groups. On the "cents off," there is one survey reported in *Sales Management, The Magazine of Marketing*. It asks the opinion: "When I read on a label that a product is selling for so many cents off, I usually believe it is a bargain? Agree: 56 percent. Disagree: 41 percent."

But the interesting point is that the lower the income the larger the percentage who thought it was a bargain.

Mr. DEVINE. You mentioned that in your formal statement.

Mrs. PETERSON. This, I think, is a matter of real concern. However, I did not cite this survey in my prepared statements.

Mr. DEVINE. You didn't answer the specific question. Do you have actual surveys to show that these companies do engage in questionable practices?

Mrs. PETERSON. I have no surveys. However, one sees certain practices which would affect price and quality competition.

Secretary CONNOR. If I may supplement that, we don't have actual surveys, but while this bill was before the Senate, we did talk with quite a few manufacturers and other people in trade, and we now support the provision as it stands in the Senate bill and the bill before your committee because we have been made aware of many, many cases in which the actual "cents-off" offer is to the advantage to the consumer.

In situations where a product is established in the market, and has a retail price in certain supermarkets that are well known to the housewives, if, because of a seasonal situation or an overstocking situation in inventory, or because the product hasn't moved as rapidly as the manufacturer had hoped, the manufacturer does make a "cents-off" offer and sees to it that this moves through the retail store to the benefit of the consumer, quite obviously, if such an action on the manufacturer's part were absolutely prohibited by law, then the consumer would be prejudiced.

We do not want that kind of prejudice to the consumer to result. That is why we are strongly in favor of the compromise position that emerged which does not make "cents-off" offers illegal, per se, but only in situations where there have been abuses, such as those that have been described, where, in fact, there has been no established price in a particular store from which the "cents-off" offer is applicable.

Therefore, we think that it is proper to leave this to the discretion of the administrative agencies, as is done in the present bill.

Mr. FRIEDEL (presiding). The time of the gentleman has expired.

Mr. MOSS?

Mr. MOSS. Mr. Chairman, I undoubtedly would have had some questions had I had the opportunity to read their statements. I found it necessary to appear before the Committee on Agriculture in behalf of my constituents. I will read the statements and reserve my questioning until later.

Mr. FRIEDEL. Mr. Nelsen?

Mr. NELSEN. I would like to direct a question or two to Mr. Cohen.

The Food, Drug, and Cosmetic Act authorizes standards for containers of food. Could you explain these standards to us? Just what do your standards provide, and what specific authority do you have to prescribe these standards?

Mr. COHEN. I will ask Mr. Rankin, the Deputy Commissioner of the Food and Drug Administration, to answer that, Mr. Nelsen.

Mr. RANKIN. The authority you refer to is that conveyed in section 401 of the Food, Drug, and Cosmetic Act. It authorizes the Secretary of Health, Education, and Welfare, when he finds that it will promote honesty and fair dealing in the interest of consumers, to promulgate regulations establishing, among other things, standards of fill of containers for foodstuffs.



Mr. NELSEN. It seems to me that the authority that you do have is the professed authority that is asked for in this legislation, is it not? It seems to me there is a duplication. You have this authority now regarding these standards of fill, do you not?

Mr. RANKIN. There are many authorities, Mr. Nelsen, in the bill which are not conveyed in the Food, Drug, and Cosmetic Act. The bill goes beyond the present law.

Mr. NELSEN. How many rules and regulations for the establishment of the fill of a package has the Food and Drug Administration previously outlined?

Mr. RANKIN. The standards of fill of containers that have been issued relate primarily to canned fruits and vegetables, and certain canned seafoods, and the number would be perhaps 35 or 40, Mr. Nelsen.

Mr. NELSEN. What do the standards provide? I am curious. We are getting into that in this bill. What can you say about the provision that gives you the authority to indicate what is in a package? For example, how would you state it?

Mr. RANKIN. The standard for a canned vegetable would provide, for example, that a No. 2 can of beans should contain no less than a stated weight of beans in order to meet the established standard.

Mr. NELSEN. Have there been any new standards recently put into effect or asked of the industry? Have there been any new ones in the past year?

Mr. RANKIN. I am sorry, Mr. Nelsen; I didn't understand the first part of your question.

Mr. NELSEN. Within the last year or so have you required any new standards that had not previously existed? I am referring to new standards of requirements on packaging.

Mr. RANKIN. I do not recall any within the past year.

Mr. YOUNGER. Would the gentleman yield?

Mr. NELSEN. Yes, I will yield.

Mr. YOUNGER. Yesterday, Mrs. Peterson gave the example of the canned peaches. Is that not a violation of your present existing law which she cited? It is a violation of section 402(b)(1), isn't it?

Mr. RANKIN. As I recall the illustration that Mrs. Peterson gave, it referred to a declaration on the label of the can of peaches that the can would provide a certain number of servings. Present law does not authorize us to establish what constitutes a serving, so it would not be a violation.

Mr. YOUNGER. But it was swimming in juice. You have a regulation about adulterated foods in canned foods. If that was swimming, it is an adulterated article. I think the canning industry would so state. I think they would all hold that that was a violation.

You didn't report it to the Pure Food and Drug, did you?

Mrs. PETERSON. No, I did not, but I am not sure there was a violation.

Mr. NELSEN. Have I time for another question, Mr. Chairman?

Mr. FRIEDEL. Yes.

Mr. NELSEN. There is one other question I would like to direct to whomever can answer it.

Since Minnesota is a milling State, I am aware of one problem that has always existed in the milling industry, having to do with a bag

of flour taking on or losing weight, depending on the humidity that exists. In the law presently, there is a provision that permits a variation due to these causes.

Under the terms of this bill, I am not sure that there is any permissive language that would take into account these things that cannot be completely regulated. Maybe Mr. Dixon would have an answer to that.

Mr. DIXON. I would understand that it would be taken care of, sir, because I think the regulating authority, in determining the need for the procedure, would have to develop a record that would stand up under anyone's review.

In other words, if it could be shown to any reasonable group of people that this was a technical result, quite obviously the regulating authority would not have any business in the field.

Mr. COHEN. Mr. Nelsen, I think section 5(b) is expressly intended to take care of situations like that. I will be glad to read it into the hearing record.

Mr. NELSEN. I think the record should be clear on that point.

There is also provision in existing law that recognize the fact that in, for example, the milling industry or in the feed business, mechanical weighing methods are used where you may have thousands of packages going through. There may be slight variations in weight because mechanical equipment is involved. There is also under the present law some provision to take into account this type of variation.

Will this be taken care of?

Mr. COHEN. I think 5(b) is intended to take care of such similar situations, too, Mr. Nelsen.

Mr. NELSEN. I want to be sure that the record is clear on it.

Mr. FRIEDEL. Will the gentleman yield?

Mr. DIXON. Section 5(b) even requires the promulgating agency to issue regulations exempting them; this should clarify the problem.

Mr. NELSEN. Mr. Chairman, I guess my time has expired, but I would like to develop this a little more at a later period, if you don't mind.

Mr. FRIEDEL. Certainly.

Mr. Cohen said he thinks section 5(b) will take care of that.

Mr. COHEN. It is clear in my opinion that it takes care of the situation.

Mr. FRIEDEL. Mr. Kornegay?

Mr. KORNEGAY. In view of the prior colloquy with reference to peaches, permit me to cite, Mr. Chairman, that it is my information that there is a standard which has been promulgated by the FDA on peaches. It is found in 21 CFR, section 27.4, 1965.

In looking over this bill, I have several questions which I would like to propound to the panel generally.

The first question that I raise is in connection with section 7, page 12, which provides for the enforcement of this act. It refers to any consumer product, and so forth, and then it says "shall be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act."

But the provisions of section 303 of that act, however, shall have no application to any violations of section 3 of this act.

As I understand it, section 303 of the Food and Drug Act is the criminal section, which provides for, I think, up to a maximum of 3 years' imprisonment, and perhaps a substantial fine, up to \$10,000, although I don't recall the exact figure.

Mr. COHEN. It is 1 year in jail and \$1,000 for the first offense.

Mr. KORNEGAY. What about the second one?

Mr. COHEN. I think it is up to 3 years and \$3,000.

No, it is 3 years and \$10,000.

Mr. KORNEGAY. Maybe I had the second offense in mind rather than the first.

Each separate act is a separate violation under this act, isn't it?

Mr. COHEN. That is correct.

Mr. KORNEGAY. If a man were found guilty of putting out two containers in violation of the rules and regulations, he would be subject to the stepped-up time.

You exempt that criminal provision from section 3 of the act. Does that, in effect, exempt the whole act from the criminal penalties in the present law, or does it just exempt section 3, as it says?

Mr. COHEN. The criminal penalties do not apply with regard to this act; namely, the Fair Packaging and Labeling Act.

Mr. KORNEGAY. In other words, the whole act which we have here?

Mr. COHEN. Yes, sir.

Mr. KORNEGAY. Wouldn't it be better to say that it shall not have application to any violations of this act, rather than making it a little more complicated by inserting that section 3? I thought that was the answer, because I think section 3 is the opposite section.

Mr. COHEN. Yes, sir.

Mr. KORNEGAY. It is the meat of the act, so to speak, in proving the violations which you have to prove, violations of rules and regulations promulgated pursuant thereto.

Mr. COHEN. I think either way would be appropriate.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

I find no fault with the proposal requiring labels that clearly and precisely state the contents, or the weight of the contents of a container, and I favor eliminating, or at least clarifying, adjectives such as "jumbo," "economy size," or "large size." There are, however, parts of section 5 with which I have some concern.

Do I understand that under this section it is the intention to standardize all containers?

Secretary CONNER. No, Mr. Curtin, that is not the intention.

Mr. CURTIN. Let us assume, for example, we have a certain type of container—I am groping for an example. I remember once seeing a sirup called Log Cabin Syrup. It was in a container shaped like a little cabin. What are you going to do with that specific type of specialized container? What do you intend to do in situations where a certain company has built up a reputation and its product is known by a specific kind, or shape, of container? What will you do with that?

Mrs. PETERSON. There is nothing in S. 985 which provides for regulation of shape of container and in addition there is a safeguard in 5(b).

Mr. CURTIN. Where?

Mrs. PETERSON. In 5(b), on page 10. All of those factors have to be taken into account in promulgating regulations. However, S. 985 contains no provisions to standardize shapes of containers.

If I may speak for the consumer, in section 5(d) the purpose is, again, for us to be able to make the price per unit comparisons among competing products.

Mr. DIXON. May I interrupt for a moment?

You may have in mind the bill H.R. 15440 which, on page 7, has a section 5(c) (5) which deals with sizes, shapes, and dimensions. That is not in the Senate bill.

Mr. CURTIN. I am talking about the House bill.

Mr. DIXON. That is correct, sir.

Mr. CURTIN. I will confine my questions to the provisions in the House bill.

Mr. DIXON. I came here and said if the House wished to put that in, we would not object. But if you put it in, I would say to you that it would be an unreasonable act, it would be an arbitrary and a capricious act, just because Log Cabin Syrup was put in a package that looked like a log cabin, to take it off the shelf.

There is nothing deceptive or confusing about that.

Mr. CURTIN. We can't assume generally that everything is going to be all right. I would call your attention to section 5(c) (1) on page 6, where it says that it is the duty of the person administering this act to establish and define standards for characterizing the size of packages.

This definitely gives the person administering this act the right to make standards in the type of container, I would think.

Mrs. PETERSON. May I speak on this a little bit?

Of course, this is something that will have to be decided by the administrators, but it is my feeling that what was intended was to give the authority to define small, medium, and large, and this provision specifically states that "this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity." It only refers to the designation for characterizing the size of a package.

Mr. CURTIN. That isn't what the act says.

Secretary CONNOR. Mr. Curtin, I think if you read the qualifying phrase at the end of that, it covers it, because it does say, "But this paragraph shall not be construed as authorizing any limitation on the shape of packages which may be used to enclose any product or commodity."

So I think that takes care of the Log Cabin situation.

Mr. CURTIN. Let's go to subsection (f) (3) of section 5, which would be found on page 9. I presume in reading this bill that this is intended to be the exemption section.

It says that no regulation promulgated pursuant to subsection (d) (2) with respect to any commodity "may preclude the use of any package of particular dimension or capacity customarily used for the distribution of related products," and so forth.

Secretary CONNOR. But, Mr. Curtin, that applies specifically to the density problem, which is, I think, a little different than the shape

problem that you referred to in connection with Log Cabin. The density problem is a complicated one. It is different than that.

There is an exception for it because that same size package often takes care of products of differing densities, and this is customary, and there is no deception involved because of the physical properties of the products. This particular exception is designed to take care of that problem.

Mr. CURTIN. That is correct and I have certain questions on that feature of this problem.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Van Deerlin?

Mr. VAN DEERLIN. I yield to the gentleman from North Carolina, Mr. Kornegay.

Mr. KORNEGAY. Referring to the last section of the bill, it provides that the Secretary or the Commission can postpone the effective date of this legislation with respect to any class or type of consumer commodity upon the passage of a rule.

Has any other piece of legislation that the Congress has ever passed given to the Secretary or any department or agency of the Government the authority to suspend or delay the effective date of an act?

Secretary CONNOR. This refers to the Secretary of HEW. I will ask Mr. Cohen.

Mr. COHEN. Yes, there is some precedent for that, Mr. Kornegay, in the various acts passed. I will ask Mr. Rankin to summarize that for you.

Mr. RANKIN. Mr. Kornegay, the Pesticide Chemicals Amendment of 1954, the Food Additives Amendment of 1958, and the Color Additives Amendment of 1960, all to the Food, Drug and Cosmetic Act, contained authority to defer the effective date of the law upon a finding by the Secretary that this was proper.

Mr. KORNEGAY. You would have considerable control over it by reason of your enforcement powers and the authority to promulgate regulations. That gives you considerable leeway. Why would you rather proceed that way than to postpone the effective date of the act itself?

Mr. RANKIN. The reasoning, as I understand it, behind the granting of authority to postpone the effective date of the law was that the Congress wished to be sure that citizens did not run the risk of being even technically in violation of the law if, for good reason, they had not been able to bring their actions into full compliance by the end of the period first specified.

Mr. KORNEGAY. Mr. Dixon, let me ask you a question about your authority in this matter.

In 1914, the Congress gave the Federal Trade Commission the power to stop unfair methods of competition in commerce; is that correct?

Mr. DIXON. That is correct.

Mr. KORNEGAY. Then in 1938 the Congress came along and created additional power to stop unfair or deceptive acts or practices in commerce.

Mr. DIXON. That is correct.

Mr. KORNEGAY. In 1938 the Congress also empowered the Department of Agriculture to stop the distribution of containers of foods,

drugs, and cosmetics in commerce which were "so made or formed as to be misleading"; is that correct?

Mr. DIXON. Yes, sir.

Mr. KORNEGAY. Of course, in 1953, with the creation of the Department of Health, Education, and Welfare, that authority was given to that Department, with authority in the FDA to carry out its provisions; is that right, Mr. Cohen?

Mr. COHEN. Yes.

Mr. KORNEGAY. Mr. Dixon, you recall our legislation last year on the cigarette hearings in which you and I got into a discussion over the jurisdiction of the Commission. At that time I was contending that the authority of the Commission under the laws concerning unfair or deceptive acts or practices was not quite so broad as you were contending it was at that time. Is that right?

Mr. DIXON. That was our difference, as I understand it.

Mr. KORNEGAY. In fact, pursuant to some of the questions that I asked you at that time, I believe you made the statement that your authority in this area to prevent those things was as broad as your imagination.

Mr. DIXON. As broad as our imagination which we could prove. There is always that point.

Mr. KORNEGAY. But you contended at that time that you had very broad powers, and not only the power to stop an act which, in your opinion, was deceptive, but also to affirmatively require that certain products carry warnings, and things of that type if, in your opinion, the failure to so warn the public was deceptive.

Mr. DIXON. As I pointed out to you, it was my opinion, sustained by the Supreme Court of the United States.

Mr. KORNEGAY. I remember we disagreed on the law, too, in several respects, and on what the Court had to say and had done in that connection.

The question is, if you have that power we are talking about contained under section 5(a) of the Federal Trade Act, to require the statement we are talking about to be placed on cigarettes, to inform the smoking public that cigarettes are hazardous to health, and in your opinion the failure to so advise the public would be deceptive, then why can't you under the present law control and regulate, even to the point of placing specific statements on packages, the deceptive practices in this area which is the concern of this bill?

Mr. DIXON. On a case-by-case method, the approach of case by case, I think our powers are very broad, as I have indicated to you.

Mr. KORNEGAY. You didn't approach the cigarette folks on a case-by-case basis.

Mr. DIXON. I said to you we had moved from case by case to the trade regulation movement, the rule procedure which we had proposed on cigarettes, so that we could at least across the board advise the industry as a whole.

Of course, if the industry would have paid no attention to the rule which we would have promulgated, then we would have had to resort to case by case and go back. We would have had the benefit, then, I think, of a faster trial than we would have had had we singled them out one at a time.

Mr. KORNEGAY. As I recall your testimony last year——

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. KORNEGAY. There was a change in procedures at that time, was there not?

Mr. DIXON. We added that to our announced procedures; yes, sir.

Mr. KORNEGAY. And you proceeded on an industrywide basis. Do you know of any reason why you can't proceed on an industrywide basis in any case in food, drugs, or cosmetics, or any other commodity being deceptively marketed in American interstate commerce?

Mr. DIXON. I think the most difficult question is raised there. I have faced it before indirectly in one of the earlier questions.

I interpret this piece of legislation as an adjunct or a supplement to the statute which we enforce. Obviously, if it is passed with the legislative history and with the language in the bill, I think we have a little bit more of a mandate or a direction from the Congress.

I think this is what this bill will give to us. I think we can use the tool which we have with the tool which is here.

Mr. KORNEGAY. Mr. Dixon, aren't you, in fact, trying to go beyond the point of deception? Wouldn't this bill give you the authority to go beyond the question of deception, into the area of marketing practices?

Mr. DIXON. This bill, on page 5, early in the bill, section 5(c) says when it is necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, deception is one of the legs that this bill is standing upon, and it does, in a sense, obviously stand upon the deception which is in section 5(a) of the Federal Trade Commission Act.

And I think it is interlaced in the misbranding and mislabeling section of the Food and Drug Act.

Mr. KORNEGAY. Let us go back to my question. Wouldn't it put you in an area beyond the area of deception?

Mr. DIXON. If it can be shown. I have constantly felt that the main trouble at some point in this bill, and the main underlying purpose of this bill, is in section 5(d), weights and quantities.

If you will notice in the bill that passed the Senate, they provided a different procedure, even, for approaching the problem, and safeguards. I believe it is here that the second part, about preventing or facilitating price comparisons, has been provided.

Yesterday I overstated myself on section 7 of the Administrative Procedure Act. I had in mind that it was this section that section 7 applies to. There is a safeguard. First, we must have a hearing under section 7 of the Administrative Procedure Act, and then, if the determination is made that there is a need, then the next procedure is the procedure of the Food and Drug Act.

That, basically, is a rulemaking procedure with the safeguard of judicial review written in there. But at least the Senate bill, and there is similarity in this bill on this portion of it, in Mr. Staggers' bill, is identical in this respect. The safeguards are here.

Mr. FRIEDEL. Mr. Cunningham.

Mr. CUNNINGHAM. Mrs. Peterson, you will recall yesterday we made mention of the 18-month study Congressman Rosenthal and I had as members of the National Commission on Food Marketing, having submitted our report to the President in the latter part of June.

I wonder if you had a chance to review that.

Mrs. PETERSON. Yes, I have.

Mr. CUNNINGHAM. In there, we recommend the establishment of the Department of Consumer Affairs. We had in mind that this is a complicated subject and one that should be of concern to the Government.

This Department would be, for the purpose of upgrading and making permanent, an agency to deal with consumer affairs. I presume you would favor that, would you?

Mrs. PETERSON. The method of handling consumer interests and whether a Department of Consumers should be adopted or not, I am not prepared to answer. I think that is something that Congress will decide after hearings on the subject.

I do feel very strongly that the voice of the consumer must be heard.

Mr. CUNNINGHAM. You have done a god job of speaking for the consumer. I have seen you on television. But we want to upgrade that position.

Mrs. PETERSON. I am all for anything that will assist the consumer.

Mr. CUNNINGHAM. I don't know whether our recommendation could be included in this particular bill. That might have to come out of another committee.

Mr. Moss, you are on Government Operations, are you not?

Mr. Moss. Yes, I am.

Mr. CUNNINGHAM. If we attempted to establish a Department of Consumer Affairs, would that come out of your committee?

Mr. Moss. The establishment of a new department would, I think, under the rules of the House, have to be referred to the Committee on Government Operations.

Mr. CUNNINGHAM. I believe that is correct.

That is all I have. I will yield to Mr. Curtin.

Mr. CURTIN. Thank you.

Getting back to this section 5 that we were discussing when my time ran out, I would like to direct this question to Secretary Connor, if I may.

I have some problem with subsection (f) (3), appearing on page 9, which says that no regulation promulgated pursuant to subsection (d) (2) may do certain things.

What are you going to do with the innovator? It seems to me that the innovator is the spark plug of competition. How is he going to put something new on the market, because it isn't customarily used, because it is new, and by the time he comes to your people and gets approval—and, unfortunately, Government agencies are not the speediest in the world in making these decisions—by the time you make a decision, it will not be new any more, and his competitive position will be harmed.

Secretary CONNOR. Mr. Curtin, looking at subsection (f) in its entirety, starting at the beginning, line 19, on page 8, it says "No regulation promulgated pursuant to subsection (d) (2) with respect to any consumer commodity may" and then you pick up 3 on page 9, and it says, "preclude the use of any package".

This doesn't indicate that point. In other words, no question could be raised in this situation, but it certainly doesn't state that the situation you described would be considered a violation.



Mr. CURTIN. But on line 19, page 9, it has the words "customarily used." In a new product, it is not customarily used yet as it is new. Therefore, you would have the power to regulate.

Secretary CONNOR. Only in a situation where there was a finding that the commodity in the new package had been distributed in weights or quantities likely to impair the ability of the consumer to make price per unit comparisons. That is the basic test before any action could be taken under this section.

Mr. CURTIN. Where is that in the bill?

Secretary CONNOR. I think the case that you are mentioning is not covered on all four by subsection (f) (3). Therefore, you would have to look back to the basic violation provision, 5 (d), to see what the test is. There the test is the deception or the question of reasonable price comparisons.

Mr. CURTIN. It seems to me that this particular section very clearly sets forth that the administrative authority set up in this legislation would have the right to regulate except in any package customarily used for distribution. I am speaking of an innovation, something that is completely new, therefore, up to that time it is not "customarily used." Therefore, you would have complete jurisdiction.

Secretary CONNOR. I wouldn't think that, Mr. Curtin, because it would have to be a situation that violates the basic provision, failure to give the consumer adequate price comparison information.

Mr. CURTIN. Because of the time problem, I would appreciate it, Mr. Secretary, if you could supply me further information as to just where the act says that at some later time.

Secretary CONNOR. We will put together a memorandum which will spell this out, Mr. Curtin.

Mr. CURTIN. Thank you. I have one other question.

Mr. FRIEDEL. The time of Mr. Cunningham has expired.

Mr. CURTIN. Thank you.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. I appreciate the chance to question such a distinguished group of able panelists here this morning.

I want to ask Chairman Dixon this question.

When you gave your testimony yesterday that the FTC should be the regulatory agency under this act, were you saying that under section 5(a) you would eliminate reference to the HEW?

Mr. DIXON. I said historically the Federal Trade Commission has spent its life or its experience in developing expertise in what I consider economic deceptions. I think the Food and Drug Administration has primarily been engaged in the work of protecting the health and safety.

Mr. PICKLE. Mr. Chairman, if you will pardon me, I am limited by time and I would like to get a direct answer to my question.

If you will, look at 5(a). Are you saying that it should be made clear that reference to HEW should be eliminated, modified, or what?

Mr. DIXON. I suggested that to the Senate and I suggested it to the House, that it should be considered.

Mr. PICKLE. Thank you.

Now I want to ask you or the Secretary of Commerce this question: With respect to 5(d)(2), which seems to go to the heart of the matter involved, or 5(d), if your intent is not to standardize. You point out that on page 7, lines 10 to 13, that you add "but this paragraph shall not be construed as authorizing any limitations on weight, size, dimension, and so forth."

Would you be willing to add under 5(d)(2) that same phraseology that would follow on page 8, appearing on line 4?

Secretary CONNOR. I am not prepared at the moment to answer yes or no to that. It would have to be given some consideration. It is a very key question.

Mr. PICKLE. Let me ask the Chairman of the FTC if he would be willing to add that specific language. We are just saying the same thing you were saying before. I want to put over in this section, also.

Would you gentlemen want to come back to that?

Secretary CONNOR. I think we better be given time to caucus on that.

Mr. PICKLE. When you give us an answer on that question, I also want to ask you this: Also on page 7, line 21, it uses the words "for retail sale are likely to impair the ability of the consumers," et cetera.

It seems to me that that would trigger a great many questions or such about whether something was deceptive or not. That is, what we are trying to get at, price labeling that might be deceptive.

Would you be willing to have the words "would clearly" placed there instead of the words "likely to"?

Secretary CONNOR. Mr. Pickle, I can't agree with your interpretation that this provision (d) on page 7 has to do just with deception. It is really aimed at a different objective, namely to give the consumer information so that the consumer can make price comparisons.

Mr. PICKLE. Then you are in agreement with the FTC that this bill goes beyond deception?

Secretary CONNOR. Yes, there is no question about that. Actually, the guts of this bill is to give the consumer more information and not just to cover the deception situation.

Mr. PICKLE. Would you disagree, then, that sections 3 and 4, which clearly state that there has to be proper labeling and proper weighting, shown on the package, with no qualifying statement, is not enough? Is this not what we are trying to cure?

Mrs. PETERSON. I would like to say that is not enough because the thing that we want is to be able to make price comparisons.

Mr. PICKLE. I had the feeling from your testimony yesterday that you were saying, though you didn't intend it, I'm sure, that the American manufacturer has been attempting to deceive the American public in all his packaging. I don't believe this at all.

I don't know of any case of outright fraud. If there had been, the FTC would have moved against them.

Is that your intent?

Mrs. PETERSON. I am not interpreting deception in what the manufacturers are trying to do. I think it is a competitive market. I think it is because there are no ground rules that there has been such a proliferation in some product lines that it is impossible for the consumer to make these valid price comparisons.

**Mr. PICKLE.** Every example, Mrs. Peterson, that you gave yesterday indicated to me that it was an indication that the manufacturer actually had mislabeled or misshaped his package to deceive the public.

If that is the case, what we are trying to say is that there ought not to be qualifying phrases, such a "giant," "jumbo," "family," that type of thing. I would agree with you in that respect. But if that is not your purpose, and you say you don't want to standardize, then you get into a big, broad, gray area that might trigger many suits, an endless number of suits by the FTC, if they are the promulgating agency, or some agency, which would result in an endless number of suits, and which I think would hamper the American manufacturer rather than help him.

**Mrs. PETERSON.** I just disagree with you on this, I must say. I think the point is to give the consumer this information that she needs, which we do not have.

**Mr. PICKLE.** Mr. Chairman, I hope I have reserved the right to return to the question further.

**Mr. FRIEDEL.** Mr. Broyhill.

**Mr. BROYHILL.** I would like to ask the Chairman of the Federal Trade Commission this question.

On page 5, the bill says that the Secretary of Health, Education, and Welfare will have authority over those commodities which are listed there as defined in the Federal Food, Drug, and Cosmetic Act.

The Federal Trade Commission will have jurisdiction over other commodities.

What are some of those other commodities?

**Mr. DIXON.** Very quickly, soap, detergents, paper products. These things do not fall within the definition of food, drug, or cosmetics.

**Mr. BROYHILL.** And I would like to ask the Secretary of Commerce a question.

Your authority in this bill comes into play in the procedures for promulgation of regulations, is that correct?

**Secretary CONNOR.** The procedure for the setting of voluntary standards with the advice of the manufacturers, consumers, and other groups enumerated. Yes, that is one place that would give the Secretary of Commerce authority, and another place would set the Secretary of Commerce as the conduit of information concerning this to the States.

**Mr. BROYHILL.** I yield to the gentleman from Pennsylvania.

**Mr. CURTIN.** Thank you.

**Mr. Secretary,** I hope you do not mind my coming back with questions, but I do appreciate the gentleman yielding.

Has your department made any type of study in reference to the cost of standardizing the packages under this act?

**Secretary CONNOR.** We have looked to the cost to the Department of Commerce of the additional authority that would be given to us, and our estimate is that it would take an additional 35 to 40 people, and that the combined responsibilities that I have just mentioned, having to do with voluntary standard making and conduit to the States would involve an additional cost in appropriations of about three-quarters of a million dollars.

**Mr. CURTIN.** It runs in my mind that somewhere in the Congressional Record I read, either regarding the Senate hearings, or men-

tion on the Senate floor, that your department had made a study, or caused a study to be made, as to the cost to the manufacturer, or the processor, on the changes contemplated by this act.

Do you have any information on that?

Secretary CONNOR. We attempted to pull together some information as to what this would cost all the manufacturers in the country who would be subject to the act. Quite frankly, the facts are not too conclusive. It depends upon whether the manufacturer can make machine adjustments on his packaging line or would require a completely new machine.

Until the provisions of the bill are finalized, I don't think any accurate estimate of the cost is possible. But our opinion is that most of the changes that would be required by the bill can be effected by the manufacturer through making of machine adjustments.

Therefore, with certain exceptions, which probably will be mentioned in these hearings, we do not think that the additional cost to the manufacturers will be substantial.

Mr. CURTIN. But such processor, or producer, will have to make machine changes in their cans, their bottles, or their cardboard cartons, as well as in their labeling?

Secretary CONNOR. The labeling provisions, of course, will require some additional information not now on the labels. The packaging provisions in some cases will require changes in the packaging sizes and so forth in order to comply with the provision.

But this becomes a question for each manufacturer, case by case. Without making a survey of American industry, I think it is impossible to estimate just what would be involved.

Mr. CURTIN. Do you not think that it is fair to say that there will be some cost involved?

Secretary CONNOR. Yes. There is no question about it.

Mr. CURTIN. Who will pay that cost?

Secretary CONNOR. The manufacturer in the first instance, and I assume it being a part of the cost of operation, it ultimately would show up in the price.

Mr. CURTIN. So that the cost to the consumer is going to be increased, if this bill is enacted into law?

Secretary CONNOR. In certain cases. As I indicated, the effect of this will fall unevenly in the sense that some manufacturers will be able to make simple machine adjustments probably at nominal cost at most.

Others may very well have to purchase some additional equipment.

Mr. DIXON. I wish to point out to Secretary Connor that I believe that on page 8, if you will read on page 8, line 19, it says no regulation promulgated pursuant to subsection (d) (2) with respect to any consumer commodity may vary from any voluntary product standard in effect with respect to that consumer commodity which was published before publication, and so and so.

I think this is grandfathering the product you are talking about right out of this bill. They already have these standards promulgated, and it wouldn't affect it.

Your question was to cans. That is what I am talking about.

Mr. CURTIN. That raises another interesting angle. Let us go, for example, to liquids in cans. I am speaking on a subject on which I am

definitely not an authority, so I am sort of groping. But I assume that different kinds of liquids, such as soups, weigh different amounts because of the different ingredients.

I would assume that a consommé would not be as heavy as something heavily filled with vegetables. Is that correct?

Secretary CONNOR. Yes, sir, that is correct. That is the density problem.

Mr. CURTIN. That raises an interesting question. Are you going to make all cans vary in size so that the product will always be, we will say, 8 ounces, regardless of the kind of soup? That is, all cans of soup having 8 ounces will be in an 8-ounce can. Or will you use a standard size can and say on the label that it contains either  $7\frac{1}{2}$  ounces in one, 8 ounces in another,  $6\frac{1}{2}$  in another, depending on the kind of soup?

Secretary CONNOR. Mr. Curtin, I again call your attention to subsection 3 on page 9, beginning on line 18.

Mr. CURTIN. That is the one we spoke about before.

Secretary CONNOR. Yes. That would enable the continuance of customary practices, such as in soups, where there is a uniform appearance to the soup products of one manufacturer on the shelves, because the density does vary from the type of soup to type of soup. Unless there is an intent to deceive as mentioned in that subsection, there would be no authority to make changes.

With respect to the cost, I do want to point out that in the situations that I introduced into the record as part of my testimony, where the number of sizes has been brought down as a result of these voluntary standards that have been adopted in some industries, the effect has been, in many cases, to reduce the cost to the manufacturer and thus enable the manufacturer to pass on cost savings to the consumer.

Quite obviously, if a manufacturer customarily, in order to meet competition, has been making the product available in 20 sizes, and cuts that down to 5, there are going to be some cost reductions.

That has been the experience in some of the cases of voluntary standard making already in effect.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. ROONEY. Thank you, Mr. Chairman.

I will direct my question to Chairman Dixon.

Last week, Mr. Dixon, I met with the officials of a company in Allentown, Pa., and they wrote to me concerning this bill. In their opinion, section 5 of the FTC Act, section 48(A), prohibits all unfair deceptive acts or practices.

This section of the FTC Act, in their opinion, along with the various sections of the Federal Food, Drug, and Cosmetic Act, if applied, could accomplish, in an efficient manner, what the Hart-Staggers' proposal desires to accomplish.

Would you like to comment on that?

Mr. DIXON. I will say again, Mr. Rooney, that this does supplement the existing law, as I understand it. It doesn't detract. It supplements it, together with the mandate or instructions that would come to the enforcing agencies through the passage of a bill similar to one of these two bills before you.

When an industry member comes to you and says that, what he is saying is "I think we should let well enough alone on a case-by-case method." But I point out to you that we have difficulties.

Since I have gone to the Commission, I have persuaded my other commissioners to take a broader overview of our problems instead of case by case, just from pure, simple fairness, if nothing else.

Mrs. Peterson has told you, and I would support it, that many of these unfair practices or confusions that are dealt with in this legislation are many times defensively engaged in. Someone starts it and then no one can afford not to do it.

The case-by-case method is not the best whenever one is doing it. Some method across the board is best.

Mr. ROONEY. If the law is already on the books, why do you need another law to supplement the existing law?

Mr. DIXON. This certainly fills without a doubt that what is on the books is intended by Congress to be dealt with across the board in these respects and in the manner dealt with in this legislation.

Mr. ROONEY. They are concerned about section 4(a) which would require a separate label statement of the quantity of contents in terms of ounces. In their opinion, this directly conflicts with the requirements of the Federal and State laws that contents be declared in terms of largest whole units and would tend to increase the cost of labeling, and thus passed on to the consumer.

Mr. DIXON. I could understand why they would want to keep on doing what they are doing if their sales curve is way up. But if the consumer is having difficulty comparing their product with somebody else's product as to which is a better buy, not having any reference to the quality of the product—I am talking about just price comparison—then I think they would be a little bit disturbed about their being exposed to this new type of comparison.

I think this is really the seat of their objection. I frankly belong to that school of thought that says that truth is the best way to do business, and I think that businessmen will find that out themselves if they work at it a little harder.

Mr. ROONEY. I have no further questions.

Mr. FRIEDEL. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Secretary, what you have been saying here, it seems to me, boils down to two problems, first of all, labeling and, secondly, packaging. There are ample sections in the bill with regard to labeling, but the only section I see in H.R. 15440 relating to packaging is section 5(c) (5).

Let me ask you again where you would derive your authority from to determine the size of the package.

Secretary CONNOR. Mr. Harvey, I think section 5 could be called the packaging part of the bill. There are several places in section 5 where authority is given to establish regulations with respect to package labeling and with respect to other aspects of packaging.

Mr. HARVEY. Where, Mr. Secretary, other than in section 5?

Secretary CONNOR. Look above section 5 to section 4. That ends up talking about information that is placed upon packages containing that commodity. Section 3 above that, also.

Mr. HARVEY. Let us take section 4. Would you conclude that that gives you the authority to set the sizes of packages?

Secretary CONNOR. Is your question directed just at the size of packaging or about packaging authority generally?

Mr. HARVEY. I am concerned about setting the size of the packages. Where do you get that authority from other than section 5(c)(5)?

Secretary CONNOR. With respect to sizes and shapes, section 5(c)(5) is the only section.

Mr. HARVEY. That is the only section in the Staggers' bill where you would derive that authority, is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. Am I correct in saying that that authority is not included in the Senate bill? Is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. Then what you are asking this committee to do is to insert that section in the Staggers' bill and to give you, the Secretary of Commerce, that authority?

Secretary CONNOR. Not quite. Our position is that the administration supports the bill as it emerged from the Senate, and it did not contain this provision. If this committee so desires, of course, it can go ahead and add subsection 5(c)(5).

But we are not advocating that.

Mr. HARVEY. So we are clear, then, you are not recommending that you be given the authority to set the size of packages, is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. Is there any other agency recommending contrary to that? Mr. Dixon?

Mr. DIXON. I agree fully with what Secretary Connor said. We came here supporting the Senate version.

Mr. COHEN. I speak the same, Mr. Harvey.

Mr. HARVEY. A few minutes ago Mr. Curtin was asking questions relative to the cost involved in the administering of this bill. I understood you to say, I think, that you have determined what that would be or have made estimates. Is that correct?

Secretary CONNOR. We made estimates with respect to the added cost to the Department of Commerce. I think the FTC and HEW will have to speak for themselves.

Mr. HARVEY. Let me ask you, Is your estimate of that cost included in the budget?

Secretary CONNOR. No, sir.

Mr. HARVEY. That would be over and above the budget, is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. How about you, Mr. Dixon? Have you made any cost estimate that may be included in the budget?

Mr. DIXON. No, sir, it was not. Our estimate was predicated upon the division of authority as in the bill now. If it were to be changed, if we had the whole responsibility for enforcement, it would be more. We estimated \$250,000 for that portion of the enforcement that would fall upon the Federal Trade Commission.

Mr. HARVEY. Mr. Cohen, in your case, what is the answer?

Mr. COHEN. I think as the bill stands we would probably require in the neighborhood, for the first year, of about \$1 million more to

administer this bill, and probably in the second year and thereafter in the neighborhood of \$1.5 to \$2 million more.

Mr. HARVEY. Mrs. Peterson, if I could direct a question to you, some products are designed to sell for a price. I have in mind particularly candy bars, for example. They are designed to sell for a nickel, or in times of inflation such as we have now maybe a dime.

How would a regulation such as this affect the candy bar? Are you going to tell the manufacturer that he has to have that candy bar at so many ounces so that when it comes to inflation he has to sell it for 11 or 12 cents instead of 10, or can he reduce the size of the candy bar?

Mrs. PETERSON. There is a provision in the bill that small amounts, 2 ounces, for example, are exempt.

Mr. HARVEY. What provision would that be? Can you tell me?

Mrs. PETERSON. It is page 9 in section 5(f)(2).

Mr. HARVEY. That concerns the weight or measure in any amount less than 2 ounces?

Mrs. PETERSON. Yes.

Mr. HARVEY. I have no further questions. I will yield my remaining time.

Mr. NELSEN. I am a little surprised that the budget does not contain the cost of administering this bill. The reason I make that observation is that obviously if we pass this legislation and add this cost, we again will be charged with raising the President's budget.

It seems to me that in fairness to Members of Congress if the administration wishes to pass this bill, the cost of administering it should be included in the budget.

Mr. COHEN. Mr. Nelsen, may I say it is my understanding that the amounts for the administration of this are included in the budget but not in a specific line item. That is, there is a general provision.

I don't remember the section. But the contingency fund for new legislation would take care of all of the administrative expenses that are envisaged for this bill.

Mr. NELSEN. I hope you are right.

Mr. FRIEDEL. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

I was interested in the comment by Fred Rooney, of Pennsylvania, that he had met with a food processing manufacturer, and that manufacturer had said to him something which I had said to me from a large manufacturer in my district.

That was that existing laws, properly administered, can certainly safeguard the consumer without enactment of this legislation.

Mr. DIXON, would you comment on that, please?

Mr. DIXON. Congressman Rosenthal said we were the sorriest agency in town yesterday, and I disagreed with him heartily. I might say that your constituent has said if we properly administered our law you wouldn't need it here.

I could come back and say if you gave us enough money maybe we could do it, but that would not be a good solution. I think the best solution is this approach. This very clearly is an mandate, and an expression of legislative intent of how Congress wants it done.

There would be no mystery left if Congress passes this law that this is the across-the-board approach that you have in mind, not singling



out your constituent, which we may very well have authority to proceed against if what he does is deceptive.

But if it is just confusion, we would have a better society if the consumer were better informed, with less confusion. Then you would have another drive in this bill that is not so clear in present existing law.

Mr. MURPHY. Some of the points brought up about this legislation I think has had mislabeling on the legislation. Many of the manufacturers feel that they are going to be saddled with regulations as far as the shape of their package, the size of their package, and the size of the content.

I think it has probably been some people in the country, particularly, some chambers of commerce, that have mislabeled the labeling bill.

Mr. DIXON. I have great faith in the American manufacturing process. I believe if this bill were passed, voluntarily the changes will be made 75 percent of the way. I think 25 percent are going to wait because there may be some gray areas, and they will wait until clarification comes. Then I think a certain few will wait until they are prosecuted.

Mr. MURPHY. Do you have any idea of what additional staff you will need to implement the intent of this legislation?

Mr. DIXON. As I said, with the division of authority, the great mass of the products in the chain grocery store, are within the connotation of food, drug, and cosmetics, and of those left I gave examples of. I think we would have less of a burden than the Food and Drug Administration would have.

Under that burden, I estimated \$250,000 additional money for staff to proceed. If I am short, I would just be short but I am trying to be as realistic as I can in the climate of asking for money today.

Mr. MURPHY. No further questions.

Mr. FRIEDEL. Dr. Carter.

Mr. CARTER. Mr. Cohen, how much would it cost the HEW to administer this bill for a year?

Mr. COHEN. I would say on a full-year basis, it would be in the neighborhood of about a million and a half to \$2 million additional.

Mr. CARTER. Mrs. Peterson, under the standardization of sizes and so on, do you envision standardization of packaging on bottles of catsup?

Mrs. PETERSON. I think the important thing is that the bill is not directed mainly at the container. It is directed at giving the consumer the information to know how much he is getting so that he can make valid price comparisons.

There, again, it would be a matter of how much is in it. Brand A gives 5 ounces for a certain price and brand B gives 5 ounces for another price. It is the comparability that is important.

Mr. CARTER. The main thing is to label the package with weight and so on?

Mrs. PETERSON. Yes.

May I take a minute on that? The confusion that the consumer meets is on this question of comparability. I pulled out of my file this morning these examples that different consumers have sent me saying: "Mrs. Peterson, can't you devise some calculator to figure the

price per unit so that we can carry it through the market and be able to make a comparison?" I have samples of such devices here.

This one item you wear on your wrist. These are forms of simplified slide rules, I suppose.

This need for computers indicates the confusion. We do not want to standardize anything, but we want to be able to know what is in the package, and to give the consumer the proper information to permit her to make rational price comparisons.

Mr. CARTER. So that the consumer will know just what is in the container.

Mrs. PETERSON. That is correct.

Mr. CARTER. About how many different items are there in an average grocery?

Mrs. PETERSON. I checked with the grocer where I grew up as a kid, and he told me there were around 200 items. I checked with my supermarket the other day and he said between 7,000 and 8,000. Then I asked one of the merchants in this area and he said there would be 20,000 before long.

I think the important thing to remember is that we are just trying to update the weights and measures laws. If we want the package to be the salesman, we want that salesman to be honest and tell the facts, so that we can judge as consumers what we are getting. I don't think it is a matter at all of trying to change. We love the marketplace, the innovation. But let's modernize and bring up to date the weights and measures.

Mr. CARTER. About how many different categories of food groups would be in a grocery, would you say?

Mrs. PETERSON. I would have to look this up. I am not good at numbers.

Mr. CARTER. I believe I have read there are approximately 2,000.

Mrs. PETERSON. It is something like that.

Mr. CARTER. Mr. Connor, in the past I think you have had some standardization proceedings; is that not true?

Secretary CONNOR. We have had these voluntary standardization proceedings; yes, sir.

Mr. CARTER. About how much has it cost you per item for these standardization proceedings?

Secretary CONNOR. The average case, about a year from beginning to end, and it takes the activities of three or four people.

Mr. CARTER. What about the cost of that?

Secretary CONNOR. I would estimate the cost of the average one is in the neighborhood of \$50,000.

Mr. CARTER. It is a little higher than I thought.

Secretary CONNOR. I would like the opportunity to check that. I didn't get figures for that.

Mr. CARTER. Then if we have 2,000 such categories, and the cost standardization procedure for each of these costs \$50,000, that would run to how much money?

Secretary CONNOR. I would like to correct that. The statistics show that the average cost, based on what has happened, is \$20,000.

Mr. CARTER. That is the figure that I had. I agree with you.

Secretary CONNOR. You are well prepared, Dr. Carter.

Mr. CARTER. Then with 2,000 different categories, at a cost of \$20,000 each, I believe your figures would come to an administrative cost of about \$40 million per year; is that true?

Secretary CONNOR. No, that is not true, because it is highly unlikely we would have these voluntary standardization procedures except in the situations where there are some complaints. It is possible that a particular class of manufacturers or a particular category, after this bill is passed, might want to move ahead and ask us to have standard-making procedures even before questions are raised.

But we think it is more likely that these would be held only in situations where there is some question as to deception or as to confusion for the consumer.

We think, therefore, that the kind of proceedings we would have under the voluntary standard-making procedure would be in the exceptional case rather than in the usual case.

Mr. CARTER. Those based on the figures that you have just given would require a different approach with regard to cost.

Secretary CONNOR. We estimate our total added cost for administering this procedure at about \$700,000 to \$750,000 a year.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. PICKLE. Would the chairman yield to me to see if the panel can answer a couple of questions I asked previously, or if they will not be here tomorrow?

Mr. FRIEDEL. They will be here tomorrow.

Mr. Satterfield?

Mr. SATTERFIELD. I was interested in a statement you had made yesterday, Mr. Dixon, that if FTC made a finding of need and published it in the Federal Register, if a single citizen was affected, he would have the right to request the voluntary standards procedure of the Commerce Department, and you said one person and one only.

I agree with this, frankly. I know, however, that the bill provides only that the producer or distributor affected has the right to raise this question.

I wonder whether you would support an amendment that would broaden it to include a single citizen?

Mr. DIXON. No; I think the bill is proper. When I said if there was a single one in that group, this would be a rather large group that you are talking about.

Also, I failed, I think, to delineate carefully enough because I was addressing my remarks to section 5(d). This is the section that deals with weights and quantities. This is a different procedure from the other procedures.

But I do believe this is the most troublesome part of the bill. I think as the the two bills have been revised, they recognize it and they have built in more safeguards.

Mr. SATTERFIELD. I find another difficulty in the bill that I would like to deal with now.

I can go along with the question of honesty and deception that we have been talking about, but I notice that throughout this bill, we go back to the question of the test "to facilitate price comparisons."

In line with Mr. Pickle's question a few minutes ago, we talk about the promulgating authority determining, after a hearing, et cetera,

that the consumer commodity being distributed for retail sale is likely to impair the ability of consumers to make price per unit comparisons. It seems to me that one of the keys to this entire bill is just what is meant by "price comparison."

Mrs. Peterson, in answer to a question that Mr. Pickle posed, you stated that you did not feel that requirements insofar as labeling is concerned, putting the weight clearly discernible on the package, and deleting certain misleading information, is sufficient.

I would like for you, if you will, to tell us what you do believe is sufficient in order to make price comparisons.

Mrs. PETERSON. I think what would be sufficient for the consumer is to be able to tell clearly what the per unit price is. Let me take the simplest thing. Let's take butter, milk, or something like these.

You have butter in a pound and you have it in a half pound and you have it in a quarter pound. You know brand A is good, but another brand B costs a little bit more, and maybe you will be willing to pay a little bit more. But you know what price you are getting a pound for.

The difficulty comes if it were, say,  $8\frac{3}{4}$  ounces in brand B for a certain price, and some other quantity for another brand. You would have to be a mathematical wizard to calculate the per unit price. All these devices which the consumers have sent to me are to help find out what is the best buy.

Mr. SATTERFIELD. It seems to me what you are really saying is that the people in this country can add two and two, but they can't work fractions. Is that what you are saying?

Mrs. PETERSON. They can't convert from liquid, either. I wonder, should we have to be a walking digital computer to be able to figure out the best buy?

I can give you case after case. I can bring you examples if you want me to bring them. Can I read you a couple of them?

Mr. SATTERFIELD. If they are not very long.

Mrs. PETERSON. For example, "What is the best buy, a  $3\frac{3}{4}$  ounce for 57, or a  $6\frac{3}{4}$  ounce for 69?"

What we want to be able to do—and really I think this is important for our free enterprise system, because we have always been raised to expect that you reward the person that gives you the best quality and the most—is to be able to reward the person who provides the best buy but you have to be able to determine it is. It is a bit of a disillusionment when you find out you can't make a rational buying decision.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Watson?

Mr. WATSON. First, let me commend all of you for the selection of the title of this legislation, the so-called truth in packaging, or fair packaging. It makes it rather difficult for any of us to ask any questions against it because we might be immediately determined to be against truth in packaging. I am sure that is rather ridiculous.

I might say further that I think the public has been misled in this regard, and the Congress has been done an injustice, inasmuch as many people believe there is no legislation presently in effect to guarantee truth in packaging. That is absolutely untrue.

Second, I think you have a blanket indictment of all industry and you are burning down the barn to get rid of a few rats.

Third, I think there has been a blanket indictment against the intelligence of the average American buyer.

Having made my speech, I will get back to the point propounded by Mr. Satterfield.

Is it your idea to eliminate confusion to the consumer that we have just weights in even ounces? What is your idea?

Mrs. PETERSON. What has to be determined is what is the best way to do this.

Mr. WATSON. What is your impression now since you are strongly supporting this legislation?

Mrs. PETERSON. I think the Senate bill has this in a very good way. It has it that you go to the largest unit, or ounces under a pound, or below a gallon it would be in ounces.

I think this is important, to express the quantities this way, so you can compare products more readily. Of course there are difficulties when we have fractions. I think the American people just don't like fractions. The simple units are the best.

Mr. WATSON. Frankly, the purpose of this legislation is not to eliminate deception, but to eliminate confusion to the buyer. Is that the basic purpose?

Mrs. PETERSON. That is correct.

Mr. WATSON. So the matter of truth in packaging is rather a misnomer, and I am afraid it has created quite a furor among the buying public.

I believe the Chairman of the FTC stated earlier, or Mr. Connor, that "We believe most industry is responsible." There have been very few violations of existing law. That leads me to my next question.

Secretary CONNOR. Mr. Watson, you know, of course, that the proposed title to this bill is Fair Packaging and Labeling Act.

Mr. WATSON. Of course, even in that name is the implication that the industry has been unfair in the past.

It isn't pointed out by the facts, or at least I can't find them.

How many cases have you brought under existing law to try to protect the American consumer against unfair trade practices?

Mr. DIXON. Mr. Watson, I would have to run the record. There have been many.

Mr. WATSON. What is "many," Mr. Chairman?

Mr. DIXON. This law has been on the books since 1938.

Mr. WATSON. Let's narrow it down. How many have you brought in the past year?

Mr. DIXON. I will have to furnish that for the record.

Mr. WATSON. You do not know how many you have brought in the past year?

Mr. DIXON. I would have to furnish it for the record.

Mr. WATSON. I am very apprehensive of the fact that we have not utilized existing law enough and now, instead of approaching it on an individual case basis, we are approaching it on a shotgun basis. If we don't mind shooting at everybody, we will hit the culprit.

Mr. DIXON. I think you have been approaching it on a squirrel gun basis.

Mr. WATSON. And you don't kill the squirrel by shooting the tree, do you?

Mr. DIXON. If there is a whole group of squirrels up in the tree misbehaving, and you only shoot one, if you did kill him he might ask why you chose him.

Mr. WATSON. But if you aim at one in a group, or in a covey, you better aim at one rather than the group.

Mr. DIXON. And some of them will get away. I say to you we are not perfect in the enforcement of the laws that you have passed. We can enforce the law so far as we are afforded the tools to enforce it with.

Mr. WATSON. Have you asked the Congress for additional funds in order to enforce the existing law?

Mr. DIXON. Every year since I have been Chairman.

Mr. WATSON. Then you apparently have not made the case strongly enough for the Congress to give you additional funds.

Mr. DIXON. Apparently I haven't. This last year I didn't ask for any appropriation increase because I took to heart the message that we had a pretty big job, and we would tighten our belt and do the best we could with what we had.

Mr. WATSON. May I ask one final question of you, Mrs. Peterson?

I notice on page 6 of your testimony that you cite the experiment that you ran with the group of ladies out in Michigan, I believe. Am I to conclude simply because those ladies didn't all come up with the same item purchased that there was something wrong with the advertising and the labeling?

Do you mean to tell me there is no difference in choices, in ideas of the American buying public, and simply because they didn't come up with the same item, it was unfair labeling?

Mrs. PETERSON. But the point was, they wanted the information necessary to get the most for their money. Nothing in the bill will stop the innovation and the fine ways of presenting packaged goods. But this was a study which required housewives to go through the market to get the most for their money on specified items.

Mr. WATSON. Not looking at value at all, but just at price and volume?

Mrs. PETERSON. You see, price is the first consideration. Then after that you decide on additional factors. You want to know how much more to pay for the extra quality. But you start with price. That is the basis, certainly, on which I make my marketing decisions, and that was the way this study was designed. It was a study to try to limit the decisions to price and quantity.

I think it might be interesting for you to have that study. I would like to insert that, if you like, or give it to you.

(The information referred to follows:)

**TRUTH IN PACKAGING IN AN AMERICAN SUPERMARKET<sup>1, 2</sup> (MONROE PETER FRIEDMAN, EASTERN MICHIGAN UNIVERSITY)**

The matter of truth in the packaging and pricing of products in the American marketplace has been a subject of public controversy in recent years. Much of the current attention stems from the introduction in the 87th Congress of the so-called Truth-in-Packaging Bill by Senator Philip A. Hart of Michigan. The

<sup>1</sup> This research was supported in part by a grant from the College of Arts and Science of Eastern Michigan University. Volunteers from The Ypsilanti, Michigan Chapter of the American Association of University Women, together with two students, Alice Gretzler and Margaret Keck, assisted in the data collection phase of the research.

<sup>2</sup> A briefer version of this paper was presented at the 1965 annual meeting of the American Psychological Association.

Senate hearings associated with this proposed legislation have stimulated nationwide interest, which has found expression in the mass media in the form of numerous newspaper and popular magazine articles.

Three basic assumptions of the Truth-in-Packaging Bill are as follows:

- (1) A state of consumer confusion exists in the United States with regard to the true contents and prices of many common retail products.
- (2) This confusion has resulted from improper packaging and labeling practices by American manufacturers and packagers of consumer products.
- (3) The remedy for these improper practices is a change to the federal law by which greater authority would be given to the Food and Drug Administration and the Federal Trade Commission in the regulation of packaging and labeling practices.

These assumptions are supported by the testimony of many witnesses in the Senate hearings concerned with packaging practices. As might be expected the hearings also produced testimony of witnesses who challenged one or more of the basic assumptions of the bill.

In large measure the testimony relating to the bill's assumptions was based not on empirical studies of consumer behavior in the American marketplace, but rather on the individual experiences of the witnesses or their organizations with packaging and labeling practices. A notable exception was an attempt to examine the first assumption of the bill, dealing with consumer confusion, by Nelson (1962), the Consumer Counsel for the state of California. In her study, Nelson instructed five college educated housewives to purchase the most economical package (largest quantity for the price) for each of 14 common supermarket products. All purchases were made in a Sacramento, California supermarket. The principal result of this study was that the housewives succeeded in selecting the most economical package in only 36 of the 70 purchasing decisions.

As a scientific endeavor the Nelson study has serious shortcomings, e.g., an extremely small number of subjects and the absence of experimental controls for important variables such as product and store familiarity. However, when the study is considered in light of Nelson's background and intentions, namely as an attempt by a concerned non-scientist to seek empirical evidence for a perceived problem for which scientific evidence did not exist, a more tolerant view is surely in order. In any case the Nelson study appears to be the only attempt, by scientist or non-scientist, to deal directly with the empirical problem of consumer confusion in today's marketplace.

The current study attempts to objectively define the issues in the truth-in-packaging controversy by treating consumer confusion as a psychological variable capable of measurement. It is believed that this approach to the problem will permit an empirical evaluation of the first two of the three stated assumptions of the Truth-in-Packaging Bill.

#### METHOD

##### *Subjects*

Thirty-three young married women who were either students or the wives of students at Eastern Michigan University served as subjects (*Ss*). All *Ss* had attended college for at least one year and in addition had been married for one or more years. The *Ss* were tested in a local supermarket with which they were familiar through previous shopping; indeed most *Ss* were regular customers of the store. Recruitment of *Ss* took the form of personal requests of the *Ss* through visits to their homes (mostly apartments in the married student complex of Eastern Michigan University). The *Ss* were paid for their time.

##### *Procedure*

The *Ss* were instructed to select the most economical (largest quantity for the price) package for each of 20 products on sale at the selected supermarket. A time limit was enforced for each product decision, a limit based on the number of packages on display for the product. More specifically, 10 seconds was allowed for each of the packages in the product category, unless either (1) there were less than six packages to a product class, in which case a one-minute time limit was used, or (2) there were more than 24 packages to a product class, in which case a four-minute time limit was employed.

In addition to stating which package she believed to be the most economical for each of the 20 products, each *S* reported to the experimenter (*E*) accompanying her, the information which she used in making her decision.

Each of the 20 products employed in the study had the following characteristics:

- (1) Two or more different size packages of the product were on sale at the supermarket.
- (2) Two or more different brands of the product were on sale at the supermarket.
- (3) The two or more brands for each product appeared to be comparable with regard to the nature of their contents. Thus dry cereals were not selected as a product since corn flakes and raisin bran do not appear to be comparable; on the other hand the different brands and varieties of family flour were considered comparable.
- (4) The products appeared to be widely used by American families.
- (5) The products were significant contributors to total supermarket sales. Thus table salt, which qualifies on the basis of the first four criteria was not used in the study since it represents only about .1% of total supermarket sales.

Finally, a characteristic not of any one product, but of the whole group of 20, was that the set of products appeared to be a balanced representation of the packaged products available at American supermarkets.

The testing of the 33 *Ss* took place over a two-day period. To aid in the testing a map of the supermarket was constructed with a specified route which touched upon the location of each of the 20 products. *Ss* were then tested in groups of five to ten. Each member of a group was randomly paired with an *E* and the two were randomly assigned to one of the 20 product locations as their starting point in the test sequence. After *S* had responded to *E*'s questions at the first location, the two proceeded along the route to the next product location, and continued in this manner until *S* had been tested at all 20 product locations. This experimental design not only permitted the testing of many *Ss* simultaneously but also allowed the effect of a variety of product sequences (20 in all), to be reflected in the results of the study.

Thirteen of the 33 *Ss* were retested two days after their original testing, thus permitting the determination of test-retest reliability coefficients for the experimental measures employed in the study. Concurrent validity coefficients for the measures were ascertained from correlations with the *Ss*' pretest ratings of the 20 products. The pretest consisted of a brief story about a housewife who is undecided which of two packages of a particular product to purchase. The two packages are equally appealing to her on a number of grounds, such as appearance and quality of contents. She finally decided to purchase the package which gives her more of the product for the price. It was pointed out to the *Ss* that the housewife's task of determining which of the two packages is more economical would vary in difficulty for the 20 products. The *Ss* were instructed to rank the 20 products, using an alternation ranking procedure, with respect to the estimated difficulty the housewife would have in determining the more economical of two packages containing the product.

As the time the pretest was administered the *Ss* were asked to indicate which of the 20 products were not usually found in their household.

### *Measures*

Three behaviorally based, quantitative measures of confusion in unit price information are used in the analysis of the data. The first, Confusion Measure 1, simply indicates the number of *Ss* who made incorrect choices for each of the 20 products. Confusion Measure 2 calculates for each product the mean percentage increase in unit price for the *Ss*' selected packages compared with the most economical package. Confusion Measure 3, which employs data from a supermarket trade magazine study dealing with the total sales for each of the 20 products provides an estimate of the increase in price which an economy-minded household unit with a specified budget would pay over a constant time period, say a year, if its purchases reflected the values found for Confusion Measure 2.

The rationale behind Confusion Measure 1 is reasonably clear. We want to know whether *Ss* are able to select the most economical package for each of the 20 common products; indeed, the number of *Ss* who fail in this task should be an indication of the degree of confusion associated with consumer attempts to purchase supermarket products on the basis of economy. The second measure of confusion simply reflects the magnitude of the selection errors expressed for each product as a percentage of the unit price of the most economical package.



It is assumed that the larger the value found for a particular product, the greater the error which an economy-minded consumer would be expected to make when purchasing the product.

The last measure to be considered, Confusion Measure 3, represents an interaction of the estimated consumer expenditures for a supermarket product and the percentage error given by Confusion Measure 2. This third measure of confusion provides for each product a dollar-and-cents estimate of the additional expenses which an economy-minded shopper would bear due to errors in package selection. To give substance to this measure it is necessary that the actual records of consumer expenditures or estimates of such expenditures be available for processing. A search by the writer for a detailed product-by-product breakdown of the supermarket expenditures for some statistically average, or otherwise well-specified household unit, proved to be unsuccessful. Indirectly relevant data were found, however, in the *Progressive Grocer Colonial Study* (1963), which reports the percentage contribution to total sales made by each of several hundred products for six supermarkets in the southeastern United States. The six markets were members of a larger chain called the Colonial Stores.

It seems clear that the results of the Colonial Study do not reflect American supermarkets or consumers as a whole. The study was conducted over an eight-week winter period within a single chain of supermarkets in one region of the country. Thus there are seasonal, regional, and probably socio-economic reasons for suspecting differences. However, in the absence of any suitable national data dealing with either supermarket sales or consumer expenditures on an individual product basis, the results of the Colonial Study are employed in the analysis of the Ss' responses of the present study. The reader is cautioned that the Colonial Study results serve only as an estimate, with strongly suspected biases, of the corresponding national data.

The percentage contributions to total supermarket sales for the 20 products of the present study are perhaps made more meaningful when applied to a consumer's annual budget of say, \$1,000 for supermarket expenditures. Thus the Colonial Study figure of 1.1% for powdered detergents assumes a value of \$11.00 for this hypothetical budget. For this budget, Confusion Measure 3 is simply the portion of the individual product expenditure which can be assigned to error in package selection. The actual amount assigned would depend upon the value of Confusion Measure 2. Thus a household unit with economical shopping habits and a \$1,000 annual supermarket budget might spend \$11.00 for powdered detergents. Given a value of 24% for powdered detergents on Confusion Measure 2, we would find  $2\frac{1}{2}$  of the \$11.00, or \$2.13, as the amount over and above the minimal amount of \$8.87 which our economy-minded household unit would pay if it always succeeded in purchasing the most economical package of powdered detergent. For this case then the value for powdered detergent on Confusion Measure 3 would be \$2.13.

Values for other products were found in a manner similar to that described above. One first constructs a ratio consisting of the value of Confusion Measure 2 over an expression made up of the Confusion Measure 2 value plus 100. The next step is to multiply this ratio by the estimated consumer expenditure for the product. To find the value for a total supermarket expenditure different from the base of \$1,000 employed here simply construct a ratio of the new total expenditure over the base of \$1,000 and multiply the Confusion Measure 3 value by this fraction.

#### RESULTS

Of the total of 660 decisions made by the 33 Ss, 47 represented products which the Ss stated were not usually found in their homes. Since the proportion of errors for these 47 decisions did not differ significantly from the corresponding proportion for decisions involving more familiar products, the two classes of selections (familiar and unfamiliar) were pooled for the purposes of analysis.

The three measures of confusion in unit price information were applied to the 20 products employed in the study and were found to have substantial validity when correlated with the experimental pretest (Spearman rank correlations of .58, .62, and .70 for Confusion Measures 1, 2, and 3 respectively). Likewise substantial reliability coefficients were found (Spearman rank correlations of .91, .93, and .91 for the three numbered measures). These reliability values may be somewhat too high, reflecting the unavoidably short interval of two days

typically packaged supermarket products, again problems arise. The selection criteria for the 20 products employed in the present study have provided us with a clearly non-random sample of packaged products. A particularly strong bias was introduced by selecting products with a record of relatively high total sales, which would imply relatively high familiarity among shoppers.

Two natural next steps of research are suggested by the data. The first would be a systematic study of what factors make for confusion in consumer selection. For example, packaging practices which are frequently claimed by consumer spokesmen to be confusing include the following:

- (1) Poorly presented information concerning both the nature of the contents and the quantity of contents. These deficiencies in display may take many forms; e.g., too small print, weak contrast between the printed information and the background, and failure to present the information at a prominent location on the package.

- (2) Misleading information concerning both the nature of the contents and the quantity of contents. "Giant quart" is a typical example of the latter practice.

- (3) Misleading information concerning price. Often cited here is the so-called cents-off specials. Representatives of consumer groups claim that these "specials" are often not acknowledged by supermarket managers in their pricing policies.

- (4) The use of unnatural numbers to indicate quantity. An example here would be the use of fractional or mixed numbers instead of whole numbers.

With a larger number of products than the 20 of the current study, regression analyses could be performed to determine which, if any packaging characteristics serve as good predictors of the confusion measures.

A second potentially valuable research step would involve the development and evaluation of training guidelines for consumers. With a larger and more heterogeneous group of Ss than the one employed here one could attempt to identify the distinguishing package information employed by high-scoring (as compared to low-scoring) Ss in their performance of the experimental task. A natural application of the results of such a study would be to consumers at lower socio-economic levels.

#### CONCLUSIONS

Within the confines of the particular experimental setting employed, the following conclusions appear to be in order.

- (1) The three measures of confusion in unit-price information have substantial validity and reliability.

- (2) The 20 products differ significantly on all three measures of confusion.

- (3) There is reason to believe that these differences reflect, at least in part, differences in packaging practices.

#### REFERENCES

- Fitzimmons, Clo, & Manning, Sarah L. *Purchases of Nonfood Items in Selected Retail Stores*. Lafayette, Ind.: Cooperative Extension Department in Agriculture and Home Economics at Purdue University, 1962.
- Nelson, Helen: *Packages and Prices*. Sacramento: Consumer Counsel Office, State Capitol), 1962.
- Progressive Grocer Colonial Study*. New York: Progressive Grocer Publications, (420 Lexington Avenue), 1963.

Mr. WATSON. Thank you, Mrs. Peterson. Since all of the thrust of this is on price comparison, do you think it will result in the manufacturer just putting out the cheapest item because it will be standardized and all of the additives which may improve the item are not there?

Mrs. PETERSON. That is not the point.

Mr. WATSON. You say it is so, that the consumer might be able to make an intelligent comparison of price. These ladies do a much better job than any of us men. Are you going to try to protect us or the ladies?

Mrs. PETERSON. I want to protect the consumer. I want to be very sure that we know the price pursuant so that we know what the best buy, is, and then above price we decide that we like this or that better. But we want to know what we are paying for the additional quality which causes the additional price.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Huot?

Mr. HUOT. Mr. Dixon, in answer to Mr. Rooney, I think you indicated that in setting some standards, the businesses or the industry that had a scale that was high would be reluctant to want to adapt to any standard.

Wouldn't that indicate that that particular industry would be using deceptive means and would be covered under existing laws, and could be prosecuted under existing laws?

Mr. DIXON. We are talking about confusion now, sir. I want to stay away from deception.

On deception, very clearly, if you put a bottle out here and it looks so big and it has a false side to it, with a hole down the middle, and that is all you get, that must have been done for deceptive purposes. But if you are putting out detergents in competition with several other detergent manufacturers, and you may call them "giant," "family," or "economy," but in addition to that you may have one with 1 pound, 1 ounce; 1 pound, 4 ounces; 3 pounds, 2 ounces; the problem here—and it is no reflection on one's intelligence—is, I think, one just doesn't remember from their early education how to convert dry weight into ounces very quickly, and especially if you lay into that a fraction. Then even the college graduate begins to flunk.

Mr. HUOT. But in your example of, say, a container that just had a hole in the center, with very little in it, with reference to what Mrs. Peterson says, if the labeling were proper, that it contained 4 ounces and was 29 cents, this would not be deceptive even if the package was very big, as long as it carried 4 ounces.

Mr. DIXON. Someone might say, "This is a big 6-ounce bottle."

Mr. HUOT. But they couldn't say that.

Mr. Secretary, in talking of voluntary standards, you were indicating voluntary standards were set by industry, I believe.

Secretary CONNOR. No, I think I would like to make it clear. Mr. Rosenthal, when he testified, seemed to think that consumers did not play a part. In fact, under this bill, the consumers will play a part throughout the process of voluntary standardmaking.

The procedures for the development of voluntary product standards now in effect provide for the participation of consumers throughout the development of a voluntary product standard. This participation of consumers is further guaranteed by subsection 5(e) of S. 985, which requires adequate manufacturer, distributor, and consumer representation in the development of a voluntary product standard pursuant to a request under subsection 5(d).

Mr. HUOT. But industry has provided voluntary standards of its own, has it not?

Secretary CONNOR. Yes, sir, in about 500 cases under the current operating procedures.

Mr. HUOT. Also, in answer to Mr. Curtin's question, you talked about density in packaging, and Mr. Curtin mentioned soup. I happen

to have people in my district who make soup. Their soup is not the type where you add three cans of water. It is a whole soup, if that is the terminology.

I think Mrs. Peterson indicated that if the packaging were uniform in the brands, this would be correct. The soup I am referring to is not sold here. But they couldn't put in 6 ounces. They would end up with a can of soup that could be put into a tablespoon.

Mrs. PETERSON. The only part that the consumer is concerned about in soups and puddings is how much will it serve? The part that is important is the definition of a serving. One knows when you read the label that this will make so much soup when you add water to it.

It is a matter of how much there is. Here we come to the definition of serving that is most important. The different densities in containers customarily used is taken care of under the bill. There is no attempt in the bill to change that. It is also protected by the provisions on existing voluntary product standards or containers.

Again, we have to remember what we are here for, and that is just to give the consumer the information that he needs. In this case they are concerned about the servings. However, this bill does not require "servings" to be used but only to be defined where necessary.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Mackay?

Mr. MACKAY. Thank you, Mr. Chairman.

I would like to say, as a lawyer, that Mrs. Peterson is the most able and effective advocate I have ever encountered, so I don't want to ask her any questions.

But, Secretary Connor, man to man, don't you think the philosophy, back of this legislation, looking at it from a man's viewpoint, might lead to the destruction of the foundation garment, cosmetic, and wig businesses?

Well, you don't have to answer that.

What bothers me about this is the fact that the congressional affairs committee of the Atlanta Chamber of Commerce, with which I meet frequently, has studied this bill and is not sold on it. I happen to know that they have real intellectual vitality, and they don't just pass canned resolutions sent down from Washington. They agree with the objective of this bill.

They state, first, that it is their opinion that adequate safeguards already exist for the correction of deceptive packaging and labeling.

It is your opinion, and Mr. Dixon's opinion, that they do exist; is that right?

Secretary CONNOR. That is right. This bill supplements the existing laws in two important respects. First of all, it broadens the scope of activity, particularly by including this requirement for adequate information to the consumers so that they can make reasonable price comparisons.

Secondly, it helps in the administration of the procedures by what Mr. Dixon calls the blanket type of procedure rather than case by case.

Mr. MACKAY. Have there been any real studies in depth made beyond those cited by Mrs. Peterson about the extent of this type of confusion? Can you determine that quantitatively?

Secretary CONNOR. Mrs. Peterson, in addition to what she talked about in her testimony, as I understand it, conducted hearings on a nationwide basis.

Mrs. PETERSON. We had four regional conferences.

Mr. MACKAY. There is a lot of difference between a conference and hard data.

Mrs. PETERSON. But in each one of these conferences there was a definite section of the country where this issue was brought before them. It was overwhelmingly in these conferences a subject of great concern.

It is not only that, but also the list of people and the organizations who have supported this legislation. The thing that is impressive to me is the individual housewives who speak up on this. They write and say that they have never written letters before, but this is something that they have been seething about and then will cite examples.

Mr. MACKAY. But there has not been any compilation of hard data?

Mrs. PETERSON. I don't think there needs to be. All you need to do is go shopping.

Mr. MACKAY. The other thing that this chamber of commerce committee said is that this will result in duplication. As I understand your testimony, it will not. You are not creating a new agency. It might involve the employment of new personnel in existing agencies; is that correct?

Secretary CONNOR. That is correct.

Mr. MACKAY. It would be helpful to me, as a Congressman from a key distribution point in the country, for the case to be stated to a lot of these businessmen because they construe this bill as having far deeper ramifications than has been stated by this panel.

Secretary CONNOR. Mr. Mackay, I think quite a bit of the confusion comes from the fact that some of the earlier proposals were far broader in scope than what has emerged from the Senate after these extensive hearings. I think some of the people who opposed this bill still think it contains provisions which have been changed or deleted.

Mr. MACKAY. Are you satisfied with the Coca-Cola bottle shape now?

Secretary CONNOR. I would never go back to Atlanta if I said anything otherwise.

Mr. MACKAY. I just wanted that in the record.

Mr. WATSON. Would the gentleman yield?

Mr. MACKAY. I yield.

Mr. WATSON. You said a moment ago that you have many organizations supporting this legislation and there is no necessity for any quantitative study on it, Mrs. Peterson.

Could you imagine any organization in the United States, except one which is against motherhood and highway safety, if you presented them with the question, "Do you favor truth in packaging?" that they wouldn't say overwhelmingly, "Yes"?

Mrs. PETERSON. I am certain of that.

Mr. CURTIN. A good deal of reference has been made to "giant size." I hope the people downtown will not interfere with the Green Giant Canning Co.

Secretary CONNOR. That is a real giant.

The CHAIRMAN. Mr. Gilligan?

Mr. GILLIGAN. Thank you, Mr. Chairman.

I will address this generally to the distinguished members of this panel.

The declaration of policy under section 2 says:

Informed consumers are essential to the fair and efficient functioning of a free market economy. Labels should permit consumers to obtain adequate information and should facilitate price comparison.

As I understand it, present law deals with information as to the quantity of the contents. There is existing law requiring net quantities to be published on the label of any package. So that much has been taken care of.

The second goal stated here, that of facilitating price comparisons, bothers me a bit in that the second part of the question for the consumer, that of quality, is not touched upon at all. It seems to me we may be overemphasizing price as against quality to the ultimate detriment of the consumer.

For instance, Mrs. Peterson, on page 9 of her statement, in the last paragraph, says that:

In another supermarket I found detergent powder sold by the following designations: "regular," "medium," "king," "giant." Of three different brands, the "giants" contained two pounds, two pounds six ounces, two pounds three ounces.

The question still is: Which was the best buy, and is there a best buy in terms of price and quantity, or doesn't the quality of the detergent or its performance characteristics have the real, final say?

Mrs. PETERSON. Exactly. What we need as consumers is to be able to know that this one, which claims so much cleaning power is for 2 pounds and this price; and this one, that claims so much cleaning power, is this price. Then I will decide which one gets my wash the cleanest and which one doesn't and pay a higher price if necessary to get the extra value.

Mr. GILLIGAN. But if a detergent doesn't clean your clothes, I don't care how much you are getting for a dollar; you will not buy it.

Mrs. PETERSON. No, you won't but the point is we have to start with the price. The price is the thing that the consumer looks at first. Then, above that, we want quality.

But knowing how much the unit price is gives us the basis on which we can determine what we are paying for the extra quality that we want.

Mr. GILLIGAN. Assuming, for a moment, that the concentration is to be on price, the second question occurs: Am I to understand from section 3(b) that the retailer, who for the most part sets the prices, is specifically exempted from this legislation?

Mrs. PETERSON. Yes.

Mr. GILLIGAN. So we are concentrating on price but leaving out the man who, for the most part, sets the prices?

Mrs. PETERSON. From our point of view, what we want to know is the amount that he is charging us for that, so that we can make the comparisons. I come back every time to the point that it is important to give the consumer the information to make the price comparison. This is not a price-fixing bill, you see.

I think also it is important that in this study in *Sales Management*, *The Magazine of Marketing*, the question was asked, "I make a habit of looking for information about weights and measures on the package I

intend to buy," and 85 percent in this industry-sponsored study said they do.

You see, you start with price. Quality is a subjective thing as to what I like and what someone else likes. You cannot legislate in these things. But you can give the ground rules to manufacturers so that the consumer will be able to make those other qualitative decisions.

Mr. GILLIGAN. We were talking about the difficulty in dealing with fractions before. What about the retailer who advertises one can for 9 cents, two for 17, and maybe three for 26.

Mrs. PETERSON. If they are all the same size can, then you can decide. You can still do that, even without these computers that I had. The difficulty is dividing a can that is a mix, one quart and so many fluid ounces, and another one that is something else, so that you have to get them first down to a common denominator.

Mr. GILLIGAN. Let's go back to the business of soup for a minute. How are you going to compare the soup to which you add water to the soup to which you don't add water?

Mrs. PETERSON. That comes to the question of servings. I want to know how many servings it will make.

Mr. GILLIGAN. How much water will you add?

Mrs. PETERSON. In certain soups they say to add one can of water.

Mr. GILLIGAN. When you are determining a serving, among other things you are judging how hungry your kids are.

Mr. PETERSON. That is why I want to know what a definition of a serving is. I have an amusing time with my own family because there is a certain brand of something they like very much, and I have three husky big boys for this product, and I want to buy enough for four servings for one of the boys. I want to determine how much a serving is, so that I can tell whether it is a serving for a child, a grown person, an older person.

But let's have the definition of serving made in a reasonable way so that the consumer knows how much they are getting.

Mr. GILLIGAN. Let me address this question quickly to Chairman Dixon.

Under the terms in this bill, would sport shirts packaged at the manufacturer's level be included, or any other garments of that type?

Mr. DIXON. No, sir; I would not so understand.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Farnsley?

Mr. FARNSLEY. I appreciate everybody's testimony, particularly yours, when you said that the weights and measures appeared in the Constitution.

I think we agree that weights and measures was one of the first functions of government in most societies. Is that true?

Mrs. PETERSON. It is true, and it goes back to the Bible.

Mr. FARNSLEY. In the old days, everything was in bins and you could see it and you could watch them. The Government was protecting us when we had the pound. Then there were two things that happened.

We got packaging and we got self-service. In those days if the grocer cheated you you went to another grocer. My Miss Nancy buys by telephone and always threatens to go to the other place where she can buy by telephone, so they have to protect her much.

But there is no use threatening to go to another supermarket because it is the same brand, except they have their own brand of 4-pound peanut butter and you don't know how many peanuts are in it. That is a big issue.

I am talking when I should let you talk, but isn't this what we are trying to do, to get the customer back where he was 50 years ago, and protect him a little? He is away from the clerk, as you pointed out, and there is nobody to trust. Also, he can't see what he is buying.

Mrs. PETERSON. You are stating it much better than I. Exactly that is the point. The purpose of this legislation is just to bring up to date these procedures because we do not want to go back to the cracker-barrel day. We like it this way. All we want to do is modernize those procedures so we have those advantages of price comparisons that we had.

Mr. FARNSEY. I would rather go back, but you wouldn't let us. The health people wouldn't let us.

That is about my 5 minutes.

Mr. ADAMS. There is a sharp division between food products and the products which come under the jurisdiction of the FTC. Mr. Cohen, are you familiar with section 341 of title 21, which says:

Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food under the common or usual name so far as practicable a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standard of fill of container.

Do you feel that there is anything in this bill that gives you any more than you need in the food area to not only tell them what is in the container, but what the size ought to be, how much ought to be in it, and, in effect, what number of ounces are in it?

You have the *Willapoint Oyster* case in which the FDA said in a No. 10 can there shall be 5 ounces of oysters. I think this was upheld.

I will come in a minute to you, Mr. Dixon, with regard to the nonfood areas.

Is there anything in this bill that you feel specifically you need to assist you further in telling the people, by regulation, what they should do?

Mr. COHEN. If there is anything further in the bill before you? Yes; I think everything that is in this bill is needed to clarify the authority and to extend, as the chairman said, to supplement the authority we have so that we don't have to go on a case-by-case basis.

Mr. ADAMS. I will come to Mr. Dixon's case-by-case basis in a moment. I am talking about regulations. Under section 341, it says you can do these things. I am for the bill, and we will write in here what you need to assist. But I am confused about this.

This bill, frankly, to me is much weaker than what you already have in the food area under section 341. You can even designate quality under that section.

Mr. COHEN. There are two things. It doesn't take away a single bit of authority that already exists.

Mr. ADAMS. I agree.

Mr. COHEN. To the extent that under this bill it provides that the regulations on an across-the-board basis have the effect of law rather than interpretive regulations under the existing Food and Drug Act, it does give us more authority to act effectively for the whole group.



Mr. ADAMS. Do you agree at the present time you can, for example, and I used the oyster industry simply because there is an established ninth circuit case on it, that you can go in there and tell them that they are to place in a No. 10 can five oysters?

Mr. COHEN. Yes.

Mr. ADAMS. You can also require that the quality be such that no oysters shall have sat so many hours before being canned.

Mr. RANKIN. We do have the authority to specify the quantity that shall appear in the can and the quality of the oysters that shall be present.

Mr. ADAMS. And, also, I believe you can standardize on size every can, can you not, No. 1 can, 10 can, and so?

Mr. RANKIN. We may standardize the fill of the container but we do not have authority to prohibit the use of a certain size container.

Mr. ADAMS. And you think this bill would perhaps give you that and, therefore, there is something that you need and want, is that correct?

Mr. RANKIN. That is correct.

Mr. ADAMS. Now, Mr. Dixon, with regard to the powers that you have under title 15, as I understand, you are objecting to the case-by-case system and feel if you can standardize by regulation this will be helpful.

Under the judicial review sections, aren't you still faced with the review of each particular regulation standard that you promulgate on container size or on actual number of ounces to be in a standard?

Mr. DIXON. Yes, sir.

Mr. ADAMS. Now, Mrs. Peterson, you have indicated that you believe that some standardization would be helpful. There are one or two ways you can approach this. Maybe it varies product to product, and on all different kinds. There is only one of two ways you can get standardization or comparison.

You are either going to have a number of ounces and let the container size vary to get that number of ounces, or you are going to have a particular container size and vary the weight of it.

What I want to know is what is the approach that you are advocating? That we go to a standardized series of ounces and make the container size vary, or vary the fills, or to standardized containers and vary the number of ounces within them? Or are you going to go to a whole hog like butter, where you say 1 pound, and 1 pound fits into a standard size, so you can obviously compare prices?

Mrs. PETERSON. This varies so much in each product line. Again, the standardization of weights and quantities would be in the areas where necessary for price comparison so that the consumer could know what the price per unit is. Soup is different, pudding is different, and so on, where these are varying densities or standard containers.

Mr. ADAMS. You mentioned coffee and detergents, I believe. I would like to get down to the practicality of what you want us to give you.

Mrs. PETERSON. Let us take coffee.

Mr. ADAMS. Coffee is not a good one because it is pretty well standardized.

Mrs. PETERSON. It is regularized for the regular coffee, but not for the instant coffee. For example, the regular coffee comes in 1 pound,

half pound, 2 pound, 3 pound units and you know that 3 pounds of one brand cost so much and 3 pounds of another cost more.

I will buy the expensive brand because I happen to like a particular coffee, and I will pay for the difference. On instant coffee it is almost impossible to determine the price per unit.

Mr. ADAMS. I understand there is a distinction in the Senate bill and the House bill. The Senate bill is really directed toward labeling and toward a standardization of number of ounces or pounds, but does not regulate the container size.

It has been testified this morning that the administration witnesses here are not advocating regulation of containers.

Container standardization is possible under the House bill. What I would like to know from you is from your experience and from your studies, do you believe that you need standardization or an ability to put out regulations on container size, or are you willing to say, "We will take the Senate bill which has ounces and labels" and let the containers vary according to the number of ounces?

Mrs. PETERSON. I would have to think in terms of what the products lines would need standardization of weights and quantities to facilitate price comparison.

Mr. ADAMS. We are going to try to make it easy. Which one of these two do you think it should be?

Mrs. PETERSON. These are two different sections of the bill that we are talking about. One is where we have a standard of weights and quantities in a product line established under a voluntary standard, and the other is the provision in the House bill which would permit regulations on a discretionary basis to prevent deceptive sizes, shapes, or dimensional proportions.

Mr. ADAMS. The chairman's bill, the House bill, says that you can attack from a container, and the Senate bill says you can attack from the ounces.

Mrs. PETERSON. I think it would be very helpful to have that particular authority on deceptive packages. If you put that in, I will certainly support it. It does give us that much more.

I think there is authority already, as Mr. Dixon pointed out. But this makes it clearer and does give more authority to make regulations where necessary.

(The following letter was received by the committee :)

EXECUTIVE OFFICE OF THE PRESIDENT,  
PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS,  
Washington, D.C., September 9, 1966.

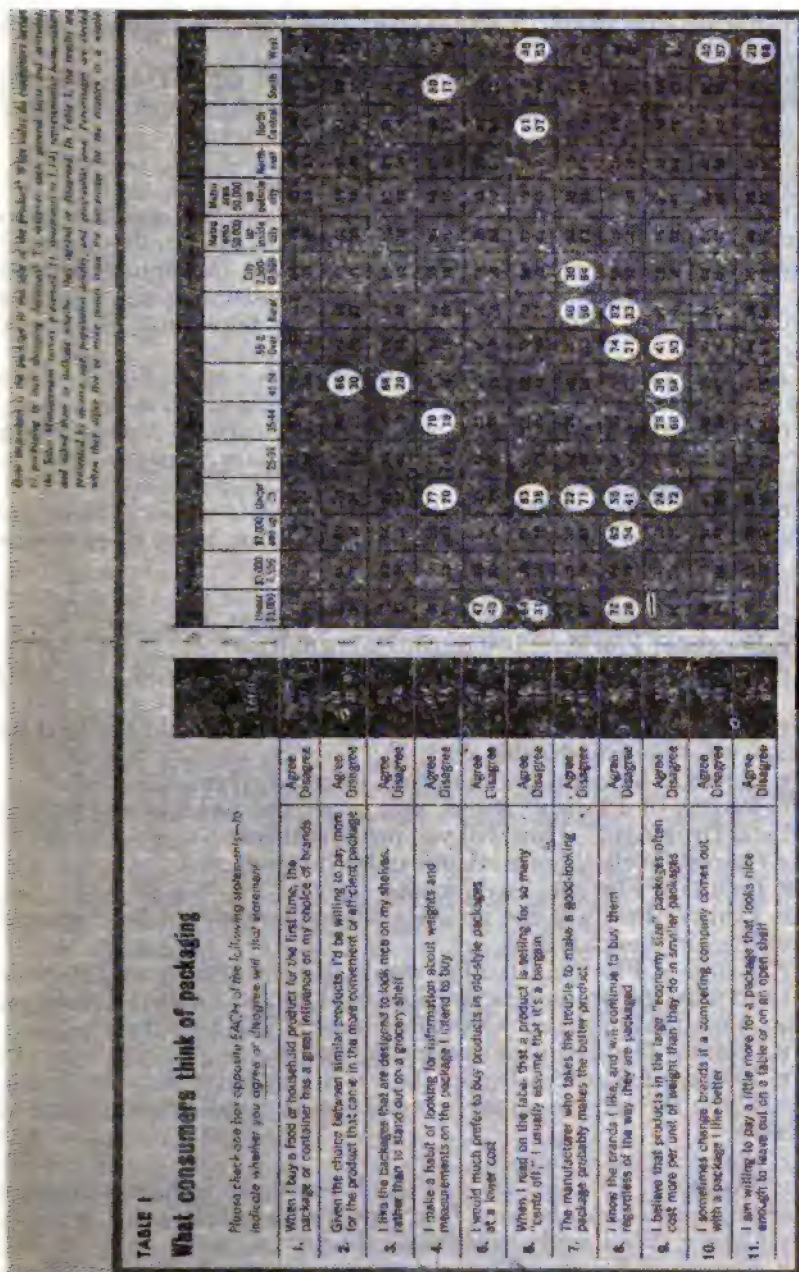
HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During my testimony before the House Interstate and Foreign Commerce Committee on the Packaging and Labeling legislation, I made reference to a survey by *Sales Management*, *The Magazine of Marketing*. This survey (fig. 1) appeared in *Sales Management* of June 15, 1966.

Since I made available to the Committee the results of only two questions on the survey, I think it would be helpful to the Committee to have the table of the entire survey included in the record of the hearings.

Sincerely,

Esther Peterson  
Mrs. ESTHER PETERSON,  
Special Assistant to the President for Consumer Affairs.



The CHAIRMAN. The gentleman from Massachusetts?

Mr. MACDONALD. I have no questions.

The CHAIRMAN. The gentleman from Florida?

Mr. ROGERS of Florida. I would like to see what the different provisions would be for a penalty.

Suppose we have a violation if we pass this act under the regulation of Federal Trade. What can you do? Do you issue a cease-and-desist order?

Mr. DIXON. Yes.

Mr. ROGERS of Florida. Do you have any other power?

Mr. DIXON. No, we have no other power other than injunction, cease and desist. Violation of that is a civil penalty, \$5,000 per day for each violation. But that is only half you have gone through two steps. One is the regulation, where there would be adequate chance to be heard, and review, plus the fact of the ultimate regulation, and violation.

When it is violated, it is a per se law violation of section 5 of the Federal Trade Commission Act. But that would have to be proven.

Mr. ROGERS of Florida. For food and drug, suppose a drug under the same circumstances or a food, would fall under your jurisdiction. What is your procedure?

Mr. COHEN. The penalties, first, are provided in section 303 of the act, and they provide for not more than 1 year or a fine of not more than \$1,000 for a conviction.

Mr. ROGERS of Florida. Not more than 1 year?

Mr. COHEN. Yes, that is right, for the first offense.

Mr. ROGERS of Florida. Is it a criminal penalty?

Mr. COHEN. I am saying what applies under the Food and Drug Act.

Mr. ROGERS of Florida. I am saying what penalty would apply if the package was wrong under this act?

Mr. COHEN. Under this bill, there are no criminal penalties.

Mr. ROGERS of Florida. Aren't you given the right to apply your Food and Drug Act? How will you penalize them?

Mr. COHEN. Well, there is seizure and injunction.

Mr. ROGERS of Florida. To do what?

Mr. COHEN. Restrain the action. Then there would be contempt proceedings in the court case.

Mr. ROGERS of Florida. In other words, in Food and Drug, you could go in and seize the product as you do a food, but in Federal Trade you can't. You just tell them, "Cease and desist. Don't do that."

Mr. COHEN. That is my understanding; yes, sir.

Mr. ROGERS of Florida. Under the Food and Drug Act, the reason we gave you the seizure power was because it could affect the health of people.

Mr. COHEN. That is correct.

Mr. ROGERS of Florida. Do you think we ought to have this same power to go in and seize because food is not packaged right?

Mr. COHEN. We already have that authority.

Mr. ROGERS of Florida. Then do you need it now? That is, if you already have this authority, why do we need to extend it?

Mr. COHEN. You are not extending the authority. We have the procedural authority already under the Food and Drug Act. There is nothing in here that supplants that.

Mr. ROGERS of Florida. In other words, I think what you are saying is basically you have all of this authority if we desire to proceed under present law. Is that basically right? That is, even as to the size of containers.

Mr. COHEN. I will ask Mr. Goodrich, our General Counsel, to answer that question.

Mr. GOODRICH. We have authority to proceed by seizure against a food, drug, or cosmetic that has a false label on it.

Mr. ROGERS of Florida. You can even do more than that, can't you?

Mr. GOODRICH. Yes, but under the bill we do not have authority over the "cents off," the proliferation of weight, sizes, the family size declaration, the serving declaration.

Mr. ROGERS of Florida. Let me ask you, what does this mean under the food and drug law on misbranded food: If the container is so made, formed, or filled as to be misleading.

Mr. GOODRICH. That provision of law would continue as it is. That would not be covered by specific regulation authority as is proposed in one section of the chairman's bill. It would leave it up to us to prevent false bottoms and deceptive packages through proof on an individual basis. You are not giving us rulemaking authority there.

Mr. ROGERS of Florida. It would be on an individual case basis in any instance.

Mr. GOODRICH. No.

Mr. ROGERS of Florida. Do you mean you are going to condemn the whole industry just because one man has done it?

Mr. GOODRICH. No. We are going to provide guidelines in advance regulating "cents off" promotions so that they will be honest. We are going to provide in advance what sizes are family size, what are giant sizes, and so forth.

Mr. ROGERS of Florida. What says you cannot do that under your authority for misbranded food now, if you put out a regulation?

Mr. GOODRICH. Simply because we only have the authority now, Congressman, to provide regulations for the fill of the container, not the container, itself.

Mr. ROGERS of Florida. It doesn't say just the fill. It says is so made. However the container is made to mislead. However it is formed to mislead. Or however it is filled to mislead.

Mr. GOODRICH. And there is no provision under that section of the misbranding provision which tells us that we can, by regulations, specify what product will be deceptive and what not deceptive. That is the part of the chairman's bill that is not included in the Senate bill.

Mr. ROGERS of Florida. The part that is what?

Mr. GOODRICH. The provision to prevent deceptive packages which is in H.R. 15440 is not included in the Senate bill.

Mr. ROGERS of Florida. I am talking about section 403.

Mr. GOODRICH. Section 403 is an objective test that has to be applied in a seizure case by proof by us that the particular package is so made, formed, or filled as to be misleading.

Mr. ROGERS of Florida. You have to show that in any instance where there is a violation, under any regulation.

Mr. GOODRICH. That is correct, unless a rule was provided—

Mr. FARNSLEY. Mr. Chairman, I make a point of order.

The CHAIRMAN. The committee will recess until tomorrow morning at 10 o'clock.

Secretary CONNOR. Mr. Chairman, may I just put in the record an answer to the question that Mr. Pickle raised as to whether the administration would be willing to put the limitation that is now in section 5(c)(1) also into 5(d), and the answer is that we would not be willing. We would be opposed to that. We can expand that answer.

The CHAIRMAN. Very well.

Can you all return tomorrow morning?

Secretary CONNOR. Mr. Chairman, the House Merchant Marine Committee, with Chairman Garmatz in the chair, has a prior lien on my services at 10 o'clock tomorrow, but I will be glad to come here as soon as I get released by them.

Mr. DIXON. We will be here.

Mr. COHEN. If I can't come, I will have somebody here, Mr. Chairman.

The CHAIRMAN. The committee is in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 12:30 p.m., the hearing recessed to reconvene the following day at 10 a.m.)

## FAIR PACKAGING AND LABELING

THURSDAY, JULY 28, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order. I see we have a new face on the panel this morning. I welcome Mr. Jensen to the panel. I am certain Mr. Connor has a good substitute. I understand Mr. Cohen has to leave early.

Mr. COHEN. At 10:30, sir.

The CHAIRMAN. That is perfectly all right.

One of our colleagues, the Honorable Arnold Olsen, who has introduced a bill, H.R. 15617, will present a short statement, and then we shall proceed with the panel.

### STATEMENT OF HON. ARNOLD OLSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. OLSEN. When my mother, Anna, or my wife, Margaret, goes into a supermarket, she is confronted with such a baffling array of goods—goods of all kinds—and three or four brands of most, all varying in size—that to choose among these goods on any rational basis becomes impossible.

Yet rational choice among goods—competition for recognition as the “best value”—is vital to the success of the American free enterprise system. When a housewife must choose between potato chips marked 59 cents and 69 cents, she wonders at the discrepancy in prices. She looks for a reason for the difference. One of the reasons is that there are 10 ounces in the 59-cent package and 10½ ounces in the 69-cent package. It takes some mental gyration to figure which is the better buy with respect to ounces per cents. It takes physical gyrations to find a statement of the weight of the contents in the first place.

Consequently, I have introduced my bill, H.R. 15617, in support of my colleague, Mr. Staggers, of West Virginia, the chairman of this honorable committee.

It should be noted that the purpose of this bill is not to unduly burden the retail merchant or to stifle free enterprise. The purpose is not to stifle initiative, that product of which Americans are so proud. Rather, our purpose is to lay fundamental ground rules for competition which have sanctions insuring performance, so that initiative

will not be discredited by deception. We ask that net weights, or similar descriptions of quantity be placed on the label in such a way as to be plainly visible and easily comparable. We ask that the use of deceptive descriptions be prohibited such as "giant half quart." We ask that the legitimate labeler and packager be given protection from those who initiate the use of deceptive slogans.

We do not seek to curb imagination in size and design of container; we do not want monotonous conformity. Creativity, as long as it is truthful, is a necessity in our society. I do not believe that this bill provides oppressive controls which would break the backs of businessmen. There is no effect that would be unduly costly—manufacturers are constantly designing new labels.

For years the sugar, flour, salt and other condiments industries have had standardized containers—as well as the liquor industry. And in this area of containers, provisions for voluntary control have been safeguarded—there are no mandatory provisions relating to other than labeling practices. But to deal adequately with the problems of—

Misleading adjectives;

Fractional variations in weight which are designed to confuse:  
and

Illustrations which have no relationship to the contents of the package, clear-cut rules are necessary to protect the manufacturer and purchasing public alike.

To this end, I ask for the support of this Truth in Packaging Act.

The CHAIRMAN. Thank you for your concise statement Mr. Olsen.

Mr. OLSEN. Thank you for the opportunity Mr. Chairman.

The CHAIRMAN. If there are no questions, we shall continue with the panel. We left off with questioning yesterday and I will start with Mr. Springer.

**FURTHER STATEMENTS OF HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN; UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE; WINTON B. RANKIN, DEPUTY COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEW; MRS. ESTHER PETERSON, ASSISTANT SECRETARY FOR LABOR STANDARDS; MALCOLM W. JENSEN, MANAGER, ENGINEERING STANDARDS, AND CHIEF, OFFICE OF WEIGHTS AND MEASURES, NATIONAL BUREAU OF STANDARDS, DEPARTMENT OF COMMERCE; GERALD E. GILBERT, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF COMMERCE; WILLIAM W. GOODRICH, ASSISTANT GENERAL COUNSEL FOR FOOD AND DRUGS, DEPARTMENT OF HEW; THEODORE ELLENBOGEN, ASSISTANT GENERAL COUNSEL FOR LEGISLATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Mr. SPRINGER. Mrs. Peterson, in your testimony 2 days ago, I believe you said you had no cost estimates of any study per unit of what this legislation would cost. That part is true.

Mrs. PETERSON. That is right.

Mr. SPRINGER. You cited a study at Eastern Michigan University which suggests that shoppers in this experiment spend 9 percent more



money than if they had chosen the best buy. Soft drinks were in that survey, weren't they?

Mrs. PETERSON. I will have to look at the list to see if that was on it or not. Yes, soft drinks were in it.

Mr. SPRINGER. Soft drinks are not covered by this bill anyway are they?

Mrs. PETERSON. Yes, they are covered.

Mr. SPRINGER. By this bill?

Mr. GOODRICH. There is a provision authorizing the continued use of bottles in inventory or in the trade.

Mr. SPRINGER. Would you repeat that?

Mr. GOODRICH. There is a provision in the bill to allow returnable bottles that are in inventory or in the trade to continue to be used through their normal life period. This is where the bottles go out with the drinks, come back and are refilled. The bill provides that they may continue to be used.

Mr. SPRINGER. Otherwise you are covered by this bill?

Mr. GOODRICH. Yes, sir.

Mrs. PETERSON. It is on page 14 under definitions, section 10.

Mr. SPRINGER. Any beverage subject to or combined with packaging and label requirements required under the Federal Alcohol Administration.

Mr. GOODRICH. That has to do with alcoholic drinks.

Mr. JENSEN. Mr. Springer at the top of page 10, section 5(f)(4).

Mrs. PETERSON. That is one of the exemptions for returnable or reusable glass containers in use; the other is 6(d) on page 11.

Mr. SPRINGER. If that is true, do you know how this was conducted?

Mrs. PETERSON. Yesterday when I was asked this question, I had a copy of the study and proposed that this be put as part of the record.

Mr. SPRINGER. Let's tell the committee so we know how it was conducted.

Mrs. PETERSON. The study was conducted with the aid of 33 Michigan homemakers. They were required by Prof. Monroe Friedman, of the Eastern Michigan University, to select the largest quantity for the price. Quality was not considered as part of this study. If I read from it directly I think you will get a much better understanding. I think in the summary the conditions were stated well: to select each of the 20 products. The shoppers had so many minutes depending on the number of packages on display. I think you would have to go into the study itself to get more detail. I would prefer to read you the description of the process if I may. I am not a statistician.

This is the technical part of the study—to measure consumer confusion as a psychological variable and it is a complicated process to determine how you would measure consumer confusion. We have made many spot surveys. I have made them and housewives have made them. We were not sure how we could measure consumer confusion, although we were well aware that there is considerable confusion.

In this study Professor Friedman developed a statistical measurement of confusion.

The S's (housewives) were instructed to select the most economical—largest quantity for the price—package for each of 20 products on sale at the selected supermarket. A time limit was enforced for each

product decision, a limit based on the number of packages on display for the product.

Mr. SPRINGER. What was the time?

Mrs. PETERSON. More specifically 10 seconds were allowed for each of the packages in the product category unless either (1) there were less than 6 packages to a product category in which case a 1-minute time limit was used or (2) there were more than 24 packages to a product class, in which case a 4-minute time limit was employed.

In addition to stating which package she believed to be the most economical for each of the 20 products, each housewife reported to the experimenter accompanying her the information which she used in making her decision.

Each of the 20 products employed by the study had the following characteristics. Then the study detailed exactly how it was conducted.

A principal finding of the study is that the 33 women failed to select the most economical package in 43 percent of the 660 shopping decisions. Furthermore the number of errors made by the shoppers varied significantly by product category. Indeed not one of the 33 women committed errors in her choice of granulated sugar, evaporated milk, and solid shortening, where in general the commodities are sold in comparable units. On the other hand every one of the 33 women failed to select the most economical package of powdered detergents, where there was an extraordinarily large variation in quantity designations.

Mr. SPRINGER. Two Government studies had 8-ounce packages—

Mrs. PETERSON. This study shows the very complications we are trying to resolve.

Mr. SPRINGER. You are trying to show that is a complication.

Mrs. PETERSON. Yes.

Mr. SPRINGER. This is what the Senate report shows would be done under the bill. That is exactly what we are talking about.

Mrs. PETERSON. What is the question?

Mr. SPRINGER. I asked you, wherein two Government studies had 8-ounce packages of potato chips, the retailer can price two of them at two for 23 and for 25. Can you tell me within 10 seconds which is the better buy and what the percentage is?

Mrs. PETERSON. I would have to take my paper and pencil and figure these things out. It would make it easier if all of these things were comparable. That is the point we are trying to make in this study.

Mr. SPRINGER. You are not going to make them all 8 ounces?

Mrs. PETERSON. Not at all.

Mr. SPRINGER. Isn't this the very thing you are talking about? You are an educated woman. What about the high school educated woman? You would not take away all of these complications. If you are talking about standardizing a half pound, a pound, 2-pound packages and say all 8 producers of potato chips are going to sell in those categories, you can't do that under this legislation.

Mrs. PETERSON. Let's back up a bit. There are three things which are important to this legislation and I think that we should start from the premise that this is really an information bill.

This is the key to this bill. It is an information bill. The first part is information largely about the label and that is the biggest part of the

bill, the information on the label. We have always required information about the amount, the quantity, and so again, this is a usual thing.

We have had this requirement for a long, long time in our procedures. Again all we are doing is clarifying the ground rules for the labeling information we have always had. That is the first biggest part of the bill.

The second part of the bill is, if possible, to give us a common terminology. Again this is information.

Mr. SPRINGER. Are you studying the packages?

Mrs. PETERSON. I am just trying to outline these provisions of the bill as we see them. The second part of the bill is really, in a way, to try to eliminate the confusion in words so we have a common terminology, so we all speak the same language.

It is like establishing an alphabet, if I may say so, in size designations, such as, small, medium, and large.

Mr. SPRINGER. You are speaking in generalities. I don't think you have pinned this down. You are going into generalities.

I am trying to pin down whether you can do this under a situation which I quote you which can come under a bill. Can a manufacturer do what I talked to you about a moment ago?

You are talking about simply figures and this is what I understood this bill is going to do. The more I study this the more I am not so sure. When I asked you the direct question, "Can you do this under the bill?" very obviously you cannot without taking your pencil and paper.

What I want to get away from is just putting a label on it and saying this is truth in packaging when you are not getting truth in packaging. I am not going to support a bill unless there is truth in packaging.

Thus far none of this panel have gotten down to the basic things of what is going to happen when this bill goes into effect.

Mrs. PETERSON. This is what I am trying to do. I can divide the different quantities into the price to get a unit value but it is much easier if I can divide it by a standard amount.

Let me say, these first two functions of the bill I was talking about want to get common ground rules for labeling. The only other part of the bill—the one which you are talking about—the first part is not new since we have always had to give information and the second part is an attachment to get a common terminology—now where you come to setting a reasonable range of quantities is the part where there is a new approach.

Remember, that under the bill we do that only if there is confusion, only if it is difficult for the consumer to be able to make price per unit comparison. That would apply in a small part of the marketplace. I went out to a store last night to bring some samples to show you where this section might have effect. And that would be only after industry has had every opportunity to set standards itself and then only after industry does it, after a need has been shown and after they have been shown there has been confusion.

Then and then only does the Government come in on your potato chips or whatever item, for example, after all of those procedures have been followed. Potato chips do not bother me as much as other items but there is still some confusion there.

Then as we say when the industry gets together to establish voluntary standards, the regulations must take into account in this bill the cost of the packaging and the cost to consumers, the availability of the commodity in a reasonable range of packages, the materials used, the way people are accustomed to buying it, et cetera, there are five very strong conditions that have to be considered before the regulations. After that then you agree to the weights will be maybe in a 2-ounce, 8 ounces, or something of this kind. When 8 ounces of this brand and 8 ounces of the other brand are available and if it is two for 17 cents and 3 for 25 cents, then you can more easily divide them to compare the unit price.

Mr. SPRINGER. There are two things involved which you are not discussing except the chairman discussed it very lightly the other day. This is what the Senate minority points out to me when I read it. There are two other factors involved—price and quality.

Nowhere in this bill are you doing anything about either one of those two which are the two big factors. There is nothing here—I don't care whether you make it a pound, a pound and a half, or a pound and four ounces, there is nothing to regulate, if the man says two for 17 cents or 3 for 24—25 and you could not calculate it and I could not calculate it.

It tells me one-sixth of a cent is a difference in price so 3 for 25 is better than 2 for 17 for one-sixth of a cent. There is nothing to keep this from happening.

You filed this report yesterday but you did not read the important parts of the report of the Michigan study. Let me say what it says. It is important to know the plan and procedures of this study do not at all deal with the day-to-day purchases of the American consumer. It may be that economy plays a small role in many of these purchases. However, for the purpose of this study the question of what criteria are actually employed for consumers and this study does not purport to do at all what you said 2 days ago because nowhere in this study is anything said about quality because nobody knew what quality was; and then the price is the third item.

I have the container, the price, and the quality. The part that I am concerned about is are we going to make this more confusing than we are doing at the present time?

First I was somewhat impressed with this idea that maybe you had standard packaging. If you do, where does quality come into this?

In other words do you want to buy Lever Bros. for  $99\frac{4}{100}$  percent, or buy something which is much cheaper, all in a standard brand and one of them costing 9 cents and one costing 11 cents and one costing 15 cents?

Nowhere are we getting down to the brass tacks of this and adding the important two extra essentials of price and quality. Now I will give you the floor, Mrs. Peterson.

Mrs. PETERSON. The first thing we consider is the price. I think Mr. Cohen said this is not the last time or the first time that we will be dealing with these questions. In this piece of legislation it should be stressed that it is important that price comparison be possible first.

We said very definitely that quality very often is a matter of taste but we are dealing with only quantity in this piece of legislation but it does not mean that additional information would not help.

I went out and tried to get some examples of some of these problems we are discussing. Here is a commodity where you may say the quality comes into the decision and granted this was not quality because quality is subjective.

We were trying to measure one part—at least I think this is what the study was trying to do. What I wanted to say was, price comes first and then you base your decision from that point on whether you want to pay more for the additional quality. Here are two packages of napkins. I don't think that the packaging bill would even affect these.

What I am trying to say, there are large, large areas of the marketplace. Here we have 70 napkins and 2 packages for 19 cents. It is marked clearly right there on the wrapper. Here is another where it is 60 napkins and that is 2 for 25. This one is 140 for 19. It is clearly marked. Maybe the quality of one is a little bit better than the other but I can make reasonable price comparisons from this information and I know it.

This is one of the examples but it would be very—it would be very difficult to figure what this difference is and that the difference affects the price area.

You see, we don't want to regulate prices. This is another matter. But from the standpoint of the consumer it is important to have the information to be able to determine price per unit.

One shopper sent this in. She said: "This is the figuring I had to do for three articles in order to try to calculate the best buy," and she was college educated.

It is this confusion in quantities and weights that I am talking about. Remember, that this part would only go into effect relative to the weights and quantities when under the bill there is evidence to show that it is difficult to make price comparisons. It is not a matter of moving into the marketplace and standardizing. It is not a standardization bill. It is an information bill.

Mr. SPRINGER. My question was back on the Eastern Michigan study which you have not answered at all. This had nothing to do with the ordinary consumer who was buying every day. This is the worst of the report. Yet you bring this report in here and as I understood it and I am not saying you said this but you gave the committee and me the impression that this was a study in consumer buying that showed that the average housewife as I got it was going to pay 9 percent more than she would and you were going to clear up this 9 percent.

I have not seen any testimony yet to show how she is going to clear up this 9 percent so that she can get 9 percent more for her purchase.

This is the part that is bothering me because I think this question of price plus quality are two factors which certainly are as important as the questions of studying ounces and pounds.

Mrs. PETERSON. Price is not part of this bill.

Mr. SPRINGER. I am not saying that it is a part. It is not a part. What I am trying to find out is how you are going to, by this bill, clear up the confusion when these are two important elements that have to be taken into consideration. Everybody on this panel has left it out as if it were a hot potato then to the same extent the Senate did when

they sent the automobile safety bill over here and left out 98 percent of the automobiles of the country.

This is a particular committee, we read it line by line. We don't let the staff write the bill for us. You are going to have to convince us on this. After thinking about this for 2 days we are certainly not touching the important elements of the bill which will remove the confusion that you are talking about.

Mrs. PETERSON. It will be a big help for people to be able to tell what the price per unit is.

Mr. FRIEDEL. Will the gentleman yield?

Mr. SPRINGER. Briefly.

Mr. FRIEDEL. Do you have a package of napkins there? How would this bill apply to those?

Mrs. PETERSON. It would not affect it. I think another point that is important is that this bill now is quite different from the original bill that was introduced.

I think we have to recognize that we are dealing with another bill. There are many factors in the original bill that do not appear in this legislation. That is true. I wanted to use these examples to show that I am pleased, as I told you yesterday, with how many industries are in fact complying already with the provisions of the bill.

I want to show how the bill is really aimed at information and to take care of the instances where we do not have clear or sufficient information. Will you excuse me if I give you a few more examples? May I, Mr. Chairman?

Mr. SPRINGER. Just a moment, Mrs. Peterson. On this thing, last night—we are great outdoor picnic people—here are three standard napkins. Very obviously two of these are alike but a third one was certainly a good one. My wife said she used the better ones on special occasions.

But how do you clear up this thing I am talking about where you have in my drawer two napkins of the same size as the other one but the third one was certainly a much better napkin?

There are three napkins, two alike and one different. I don't understand yet where, in this bill, you are going to clear up this confusion. I am willing to listen to that.

Mrs. PETERSON. This bill does not touch that. It does not intend to move as I see it in areas where it is not needed, as I tried to point out.

Here is another very good example. Here is a good soda cracker package. It is good, it is fine, there is no problem at all—1 pound net weight—it tells where the producer is located, there are no misleading things on it. There are four brands that package in this same size of one pound—no problem. It would not be touched.

Here is one—3 cents off. Under the original bill, that would have been banned, but now to have regulations on "cents off" is discretionary. This is where again some of the confusion may come up.

Under this bill you could have regulations in a product line on "cents off." Is that a legitimate 3 cents off? Was it passed on to the consumer? Has it been a standard gimmick or was it genuine? Under the bill as it is now, under your bill, the promulgating authorities are given this discretion to regulate "cents off" based on whether or not it is legitimate.

It is not a matter of banning bargains. They may be perfectly legitimate if it is shown they were passed on to the consumer.

Here are two cans of juice—really nothing evil about this. It states what it is; it states where the producer is located; it shows 1 quart 14 fluid ounces. (Under this bill you would have to say 46 fluid ounces.) Then farther down the label it says “approximately 6 cups, 7 to 9 servings.” Here is another one exactly the same, all of the same information on it and the exact same quantity—and then you come to “approximately 6 cups, 11 to 12 servings.” It is exactly the same size.

What I am saying, we are trying to get a common terminology in the bill. A woman picks up the one can of juice and thinks she is going to get 12 servings—12 of what? What kind of cup—a teacup, a demitasse? A cup to me means 8 ounces.

Mr. SPRINGER. Let's ask the Chairman of the Federal Trade Commission. Is that a violation of the law?

Mr. DIXON. If we could determine by a group of witnesses or by the God-given brains we are supposed to have that that is deceptive and confusing we could say stop that.

Mr. SPRINGER. This is what I am getting at further, Mrs. Peterson. I am trying to get along with that—what the Chairman has not said positively. He only said if you can do so and so, but what are you doing over and above this bill?

One thing as I understood the Chairman to say the other day he could do it for an industry. Maybe that is an improvement, I don't know, but actually you have a thing here complained about that you can enforce the law today.

Mrs. PETERSON. I leave this to Chairman Dixon.

Mr. DIXON. This bill, if I may interject myself, would be rather an instruction or mandate from the Congress that if it is necessary you can proceed under this procedure over and above the case-by-case procedures that you have now in this manner.

Mr. SPRINGER. That is what I understood and I said maybe we are talking about an improvement. When we are talking about removing the confusion, I do not have this straight yet what she is talking about here, that she is going to remove the confusion. This is the part that bothers me a little bit.

Mrs. PETERSON. I would love to give you one more example of confusion in the marketplace.

Mr. SPRINGER. You have not cleared up anything for me by this kind of testimony because I can see if you take price and quality, the confusion is just as great as it was before.

Mr. COHEN. May I say something because I do have to leave.

Mr. SPRINGER. Don't leave, I have some questions.

Mr. COHEN. Mr. Rankin, the Deputy Commissioner of Food and Drug will stay here for me.

I do want to say this before I leave. I think you are absolutely correct when you talk about eliminating or removing the confusion that this bill does not do that in 100 percent fashion.

I think you are absolutely correct that that cannot be completely done unless in addition to this bill you were to have price regulations per ounce or per unit and unless you had quality determination. I agree completely with you on that so I think rather than saying that

this bill is going to eliminate or remove completely all of the confusions that exist in the marketplace, that would be incorrect.

I think this takes a step, a large step, not a complete step in that direction, but to take the ultimate step, I think you would have to absolutely regulate price per unit. You would have to determine what, and I think that at this time would be undesirable, so I hope that the point that you made would not mean that something that is good and in the right direction could not be achieved unless we reach the millennium all at once and I don't see that we can do that.

Mr. SPRINGER. Mr. Cohen, that is a pretty general statement, too. Are you going to have just as much confusion as you had before? I cannot see how you can do anything in this field when this man can regulate prices and there is nothing to prohibit him from offering 2, 3, or 4 for a price.

There is nothing to prohibit him from having double sizes but when you put the quality thing and the price on it, this is a thing that adds just as much confusion. This is what the Senate minority report pointed out that you did not take away.

I pointed out this one example that worked perfectly on Mrs. Peterson who is a very educated and sophisticated woman in this whole field of consumer goods. If she can't solve one little problem which I read from the Senate report which I thought she might have read to give me the answer right off, but she apparently did not see the Senate minority report.

I am just wondering, Mr. Secretary, as to just what the accomplishments of this bill are going to be. I have been listening carefully to the Chairman because I think a large part of the enforcement is going to be in the Chairman's hands.

I can see that he is getting his mind working a bit and the wheels are going around a little bit as to what he can do with this bill but when I start these asking questions—these are practical ones.

You are going to enforce the pure food and drug portion of the bill.

Mr. COHEN. Yes, sir, as far as it relates to foods, drugs, and cosmetics, yes, sir.

Mr. SPRINGER. What I am wondering in this is why didn't you come in and ask us to amend the pure food and drug law because the enforcement is in your hands rather than come in here with a bill like this which is mixed up with two other authorities and say put it on packaging and truth in labeling.

Mr. COHEN. Of course, this bill is the product of a lot of consideration. I think amendments to the Food and Drug Act are desirable and we have been stressing them, but I don't see any reason why the language in this bill, which does give increased procedural and other authority, is inconsistent.

It is not inconsistent with anything in the Food and Drug Act.

Mr. SPRINGER. There is nothing inconsistent but what you are doing is taking the bill and giving three authorities when all you had to do would be to ask for amendment to the Food and Drug Act.

The Chairman could have asked for an amendment on the acts he covered which would have been taken care of the same way.

What I am afraid of, Mr. Secretary, by taking a bill like this on which there has been a great deal of dramatization and you come in



here and put a big name on it and call it truth in packaging and labeling when in fact we are going to deceive the public that we are going to accomplish what they think we will accomplish.

I can tell you what the housewife thinks this bill will accomplish. I am not convinced it is going to do all this. What they think it is going to do is going to have very small pickings unless the Commissioner can find a way of getting at this when he has no control over quality or price and it is no intention of the Congress to give price control.

Mr. COHEN. It is called the Fair Packaging and Labeling Act.

I have gone through other pieces of legislation, like the medicare legislation. When it was called medicare, people said that was the wrong name but that was the name given in popular usage. But the actual name of the present bill if enacted would be the Fair Packing and Labeling Act, and I think that is a fair description of this piece of legislation.

If you think that another title of this act would be more descriptive, I would say change the name in lines 3 and 4 of the bill to make it what you think is descriptive.

Mr. SPRINGER. Where existing regulations exist concerning some products, and with variations in weight would they continue to be appraised under the legislation?

Mr. COHEN. Would you say that again? We could not hear you.

Mr. SPRINGER. Where existing regulations exist concerning some products, such a root and moisture loss in variation, would they continue to be appraised under this regulation?

Mr. GOODRICH. Yes, they would continue to be in effect. The weight loss in the flour problem, which is what I assume you have in mind, would continue to be authorized by regulations under section 403(e) of the Federal Food, Drug, and Cosmetic Act, and by this bill, itself, which authorizes exemptions to be made where necessary for carrying out the purposes of the law.

You are going to have, naturally, losses in moisture when you ship flour to Arizona where it loses moisture and that would continue to be authorized by this law as well as the existing law.

Mr. SPRINGER. In addition to the packaging?

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. Is it your intention, Mr. Commissioner, to have hearings as a basis for regulations?

Mr. RANKIN. The bill requires hearings, Mr. Springer, as a basis for the regulations to be issued under it.

Mr. SPRINGER. This is before?

Mr. RANKIN. That is right.

Mr. DIXON. This bill would require, as I understand it, two types of hearings—a special type when you get to section 5(d) which deals with weights or quantities. In that special category, either of the so-called enforcing agency, the Federal Trade Commission or the Food and Drug Administration, would have to announce a hearing that would satisfy section 7 of the Administrative Procedures Act.

This is the first hearing. This is one category—the only category I am talking about—and roughly section 7, as I tried to say the other day requires a type of hearing tantamount to an adversary type of

proceeding and it gives everyone the right to cross-examine and present witnesses.

If the enforcing agencies after that hearing determined on the record that there was confusion or it would be desirable in order to help the ability of the consumer to make a price comparison per unit, that finding would have to be again made on that record.

Then the announcement would be made and then the second hearing would be announced. The second hearing would be a hearing with which you are familiar—a rulemaking hearing, under the procedures, under the Food and Drug Act as it is so devised today.

Then, when that hearing is over with or even before that hearing starts, when it is announced, if an affected party should make the request of the Secretary of Commerce, then he must impose the voluntary standards which are in effect, then.

Mr. SPRINGER. Will those same procedures be applicable to you?

Mr. DIXON. Yes, sir; just as much.

Mr. SPRINGER. If I understood your testimony, Mr. Chairman, you indicated that you should regulate market prices where neither unfairness nor deception exists. I thought this bill was to prevent your unfair deceptive practices, at least that is what it purports to say in the title. Do you think it goes beyond that?

Mr. DIXON. Yes, I think that the section of the bill—on page 5, for instance, of S. 985, and I think about the same place in H.R. 15440 under 5(c), it is clear that the bill has as its purposes the invocation of these procedures where it is necessary to prevent the deception of consumers.

It is not in the conjunctive, it is the disjunctive here, or——

Mr. SPRINGER. You are talking about section 5(c)?

Mr. DIXON. Or to facilitate price comparison.

Under the present law it could be argued that because, for instance, the Federal Trade Commission has, since at least 1988, had the responsibility to proceed against unfair or deceptive practices that that authority is there in the law.

Well, I have tried to explain that it is there, and we have proceeded, perhaps not as perfectly as the consuming public is entitled to, because I don't think we have enough personnel sometimes to do it, but we have tried to do this on a case-by-case method.

Now the Congress, when it created the Federal Trade Commission, gave it very little so-called regulatory power. In the consumer acts——

Mr. SPRINGER. I understand what you are talking about.

Mr. DIXON. We must challenge people, carry the burden to prove it on a record in a judicial proceeding subject to a review.

This type of legislation within the wisdom of Congress sets up a procedure that is reviewable, but the regulations or the rules come in a rulemaking proceeding rather than in an adversary proceeding. There is a difference here.

Mr. SPRINGER. Describe section 4 to prevent deception to consumers. That should have been set out as one. The second is not so positive. As you say, there is an inference to facilitate price comparisons as to any consumer commodities and the pursuant to either one of those, necessary to prevent deception or facilitate price comparisons.

Then you go ahead under 1, 2, 3, 4, and 5 and (d) and on through as to how you should go about it.

Mr. DIXON. That is right.

Mr. SPRINGER. Then you say to the committee that this does go beyond the deception.

Mr. DIXON. I would say it does. I would say it does go beyond the present statutory language dealing with deception, because you have brought in here in this bill the language that the purpose also is to facilitate price comparisons as to a consumer commodity.

Now, I would say if we took the example right there perhaps it would be a very good example to take a case and litigate that one case, but if you are dealing with competitors that are all engaged in practically the same thing, and confusion comes from it, these bills set up a procedure to deal with it across the board.

That is one way to say it.

Mr. SPRINGER. Pursuant to that, and that is really the guts of the bill—

to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

1. Establish and define standards for characterizing the size of a package enclosing any consumer commodity which may be used to supplement the label statement of net quantity of contents of packages containing such product, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity;

2. Establish and define the net quantity of any product in terms of weight, measure, or count, which shall constitute a serving, if that product is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

3. Regulate the placement upon any package containing any product, or upon any label affixed to such product, of any printed matter stating of representing by implication that such product is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reasons of the size of that package or the quantity of its contents;

Mr. DIXON. This is commonly referred to as the cents-off section. The fourth one, Mr. Springer, comes nearer to the questions you were putting to Mrs. Peterson on quality than anything else in this bill. Yesterday when I first read my statement I had used the word "quality" and again my attention was called to why did I use quality. I think I said maybe it was inadvisable that I used it.

Mr. SPRINGER. I think those were your exact words.

Mr. DIXON. As I reviewed my preparation for this thing, I was reminded that this section 5(c)(4) is there. If I understand that section this has a purpose, as Mrs. Peterson told you earlier in her statement that there are some products that have various ingredients in them.

I think she used maple sirup as one thing which you could mix with cane sugar or corn sirup and come out with a sirup product. But I think it is commonly known that maple sirup is considerably more expensive than cane sirup or corn sirup, so if you have a mixture here and you just put on here that this product contains a mixture of maple sirup and corn sirup, it might be quite important to make a comparison to know how much maple sirup and how much corn sirup is in this mix.

That bears on quality. Ingredients are quality, so what makes up this product? It comes closer to it than anything else that I can think of on quality.

Mr. SPRINGER (reading) :

Require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended) that information with respect to the ingredients and composition of any consumer commodity (other than information concerning propriety trade secrets) be placed upon packages containing that commodity.

That is what you are talking about here last?

Mr. DIXON. That is right.

Mr. SPRINGER. The chairman has said to me on several occasions this does not cover any questions of quality.

Is that true or not true?

Mr. DIXON. I said that to you. When the question was put to me I said I thought perhaps it was an ill-advised selection of words. I don't believe that it was the intention of the sponsors of this bill—and when you say the title of this bill—I think the sponsor of this bill, Senator Hart, gave it its title and I would believe Chairman Staggers gave his bill its title.

This was the selection. As far as I am concerned I am here supporting the selection of the sponsors of this bill. I did not think up this title. I think it is a very good title, though.

Mr. SPRINGER. Those are the four principal parts of what is going to be done.

Mr. DIXON. If you add 5(d) to it which to me is the most troublesome section in the bill—

Mr. SPRINGER. Read it.

Mr. DIXON. That has to do with weights and quantities.

Mr. SPRINGER (reading) :

Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, or fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

There is where you are going to regulate the number of ounces or pounds or whatever is going to go into it.

Mr. DIXON. I followed the hearings that took place 2 years or more ago perhaps in the Senate Judiciary Committee. I have followed them by reading the records and the reports as they took place in the Commerce Committee of the Senate. If I sensed one thing, it seems to me that as an individual that this was the most troublesome thing confronting the consumer.

It was the inability to quickly or reasonably translate perhaps pounds and ounces into ounces or down to the common denominator where price comparisons in the mind of the purchaser could be made. I think from the very beginning that has been one of the most troublesome things that has been dealt with here because it must have been known by the sponsors of the legislation that we did have a law against deception.

But let it be said that the label tells the truth as to quantity if I understand it. Truth can be deceiving. It can be confusing. If you

remember that there are 32 ounces in a liquid quart, you can very quickly say one quart, 2 ounces equals 34, but if you have forgotten that fact and you might get it mixed up with a dry quart, you might have a little bit of trouble.

If you don't know how many ounces are in a pound, you might have that trouble. Surprisingly enough, this is not unusual for people to get so educated they can't make these simple computations.

Mr. SPRINGER. Does this bill allow a half a pound?

Mr. DIXON. I think you could, sir, on reading section 5(d)(2). It does include half a pound.

Mr. SPRINGER. What does 5(d)(2) say?

Mr. DIXON. It says where it is necessary to make a rule because there is an impairment of the ability to make these comparisons, the authority shall, among other things, promulgate subject to the provisions of the subsections (e), (f), and (g) regulations effective to establish reasonable weights or quantities and fractions or multiples thereof in which any consumer commodity shall be distributed for retail sale.

So a fraction of a pound is half a pound so I say if you made the determination that that kind of a standard should be used for a comparison, it would be within the bill.

Mrs. PETERSON. There is confusion there. We are talking about two things which are important. The first is the designations on the label that tell the story: it would be in ounces and that is in the mandatory part of the bill. That is in 4(a)(3). The part that is under discussion is the quantity sizes in which a commodity could be marketed and certainly that could be half a pound.

But it would be labeled 8 ounces, so there are two factors there that have to be clarified.

Mr. ADAMS. You couldn't label it half a pound? I don't think you can under the bill?

Mrs. PETERSON. I think there is no provision that says that if the label properly carries the net weight of 8 ounces, it might not elsewhere describe the weight as a half pound.

There would have to be the common denominator of ounces but I do not see anything here which says you could not include half a pound as well. Sometimes you may have it in even three ways on a package.

Mr. SPRINGER. I am advised by my counsel that he does not think you can have half a pound. Is that correct or not?

Mr. JENSEN. It think it is clear that the label must be in terms of ounces unless it is in even pounds, pints, or quarts—that is, the primary quantity statement.

However, there may be supplementary quantity statements. This package of which you speak would have to be labeled under this bill, net weight 8 ounces, and it could have a supplementary statement of one-half pound.

Mr. FRIEDEL. Would the gentleman yield for one brief question?

Mr. SPRINGER. Yes.

Mr. FRIEDEL. I heard the other day where anything under 2 ounces was exempt and then I heard anything under 4 ounces was exempt. Which is correct?

Mr. JENSEN. The former is correct; the latter is incorrect. Anything under 2 ounces is exempt from section 5(d) but there is no exemption for anything under 4 ounces.

Mr. PICKLE. Would the gentleman yield?

Mr. SPRINGER. Yes, I yield.

Mr. PICKLE. Does the gentleman have any reaction to the question I asked yesterday on section 5 (d), first on line 21, page 7 instead of the words used now say "are likely to impair" if he thinks it would be an improvement to say "would clearly impair."

Mr. DIXON. I think you would add an additional burden upon the enforcing agency here. It is like saying what constitutes an unfair method or an unfair competition under section 5(a) of the Federal Trade Commission Act and what proof is necessary to carry that burden or if Congress would change that to say the only type of unfair methods of competition are those that are very clear and would satisfy everybody alive.

Mr. PICKLE. Then why don't you use the word "clearly"? All through the testimony of the last few days every member of this panel has said that the label ought to show clearly what is in the package. Yet if we use the word, you object to it. You say you think it would be an undue burden, but shouldn't the test be what is fair to the American consumer?

Mr. DIXON. Mr. Pickle, whatever burden the Congress thinks we should carry, I suggest you put it in here. Under section 5(d), the enforcement agency has to have a hearing and a record of proof, if you call it that, or a record of the testimony and there must be sufficient evidence to have a reasonable basis for a finding of violation of the law. The finding under the present law would be based upon what we have heard.

If the subject bills are enacted, we would find that the consumer's ability has been impaired to make competent price-per-unit comparisons.

If you want to say "has clearly been impaired" put it in there, sir.

Mr. PICKLE. Would you also comment on the question I asked at the end of that same section 5(d)(2) where you said previously that you do not intend to standardize and you have said on page 6, lines 10 to 13 that this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, and so forth.

At the end of that 5(d)(2) on page 8, line 4, do you think it would be reasonable to also add that same language?

Mr. DIXON. I think it would be confusing. Yesterday as we left we all agreed and passed up to the chairman the answers as to why we thought that this should not be done. It would be quite a bit of confusion.

Mr. PICKLE. I stayed until 12 noon.

Mr. DIXON. Just before we left here, Secretary Connor passed up the statement, and it is still here. It is now prepared and is ready to be read and I would suggest—

Mr. PICKLE. Mr. Chairman, I would like to be furnished a copy now, and then we can pursue that later.

Mr. SPRINGER. Mr. Chairman, I have no further questions but there is just one thing still bothering me. There is this question as to ex-

actly what you intend to do, Mr. Chairman. I think we have it on the record as to what your power is, Mr. Chairman. I don't think this committee understood that from the testimony thus far. You have given us your opinion on how far you can go. That is pretty important.

There is just this second thing. I still can't believe that you come here with no cost estimates as to what it is going to cost the public in terms of unit costs.

Nobody has any opinion as to what this is going to do on unit cost, and if we are going to recommend legislation we certainly ought to have some evidence on what this is going to do to the unit costs. I can give opinions all over the place. I have been trying to get some and I am not satisfied yet that I have all of the information, but I certainly have more than this panel has.

Mr. DIXON. Mr. Springer, I think you may be asking of the panel or of the Commerce Department an impossible thing to determine.

Let us take those two cans of juice there. Those cans have to be made and that wrapping around it has to be printed. Now it does not cost any more to print that wrapper in the form that might be determined as necessary than it does to print it as it is today. It is not going to cost them one dime to do that other than at a reasonable time when they run out a mat or something it is going to have to be changed.

Now how much that cost will be, I don't know, but I would think it would be——

Mr. SPRINGER. You surely do not show very much knowledge because that is the simplest thing in the world. I am talking about some of these packages which have to fit certain small sizes, per ounce and so on. When you get into that you are getting into a startlingly different situation, especially in the drug industry and what those people are going to have to do.

This is not a question of printing something on a label. It is a question of doing their whole bottling all over again. I don't want to get into an argument with you but if you have some independent information I would be glad to have it. I have not come to any conclusion myself on costs yet but I am trying to get those because I think the committee should have the benefit of them.

Mr. FARNSLEY. You pointed out that this bill does not cover quality and quantity. Do you not advocate that we should do that? I will help you if you do.

Mr. SPRINGER. The thing I am trying to say is whether or not you can remove the confusion when the other two basic factors of price and quality are just as important as the question of labeling and packaging, so in this, really, you only have 33⅓ percent if you assume all of these are equal.

I am not sure but that the question of price is even more important than this one. I believe quality is also as important as the thing you are talking about.

Mr. FARNSLEY. Do you believe it is possible to cover one-third of the question?

Mr. SPRINGER. I think it is. You are talking about confusion. I think we have gotten down to basic facts. The Acting Secretary of

Health, Education, and Welfare said he thought it was a step in the right direction. Now I think you are talking about that, then you may be getting at the truth but this is not what the American public is expecting out of this bill, from what I have seen in my mail and in the press.

Mr. DIXON. Mr. Springer, Mr. Chairman, I think all of our combined knowledge on general economics and competition leads one to one inescapable conclusion that competition really starts with price. This is at the very guts or level of how competition comes about.

Now, over and above that, sir, is certainly quality. There is another thing if you sell a produce. I am not talking about this but generally, it may involve service, too.

But I agree with what Mrs. Peterson was trying to say to you, sir, that the consuming public if you start along the road at least to give them a measure enabling them to compare prices, they may buy a soap or a detergent or a food product and then after they try it out if it doesn't taste very good, if they don't like what they determine in quality, they will change.

But up to this moment they will never know which one of those products may or may not be the cheapest. That is all this bill is aimed at. I think it is very good to leave quality to selection.

Mr. SPRINGER. I agree with you, Mr. Chairman, but I raised one question with the distinguished lady a moment ago. She could not compute the fractions herself. In fact I couldn't compute them. I am not saying Mrs. Peterson lacks anything. I could not compute them until I took my pencil. Nothing of this bill would be touched by the problem I raised with her a moment ago. My detailed question here is actually what it will cover.

Mr. ROGERS of Florida. Quite a few companies are doing a good job, I agree.

Mr. FARNSLEY. Would the gentleman yield?

Mr. ROGERS of Florida. Yes, I yield.

Mr. FARNSLEY. Meat products are governed by the Government.

Mr. ROGERS of Florida. Mrs. Peterson, is it true, and maybe you do not know and we might have to ask the Department of Agriculture, but it is my understanding to have the Government grading, U.S. Choice, Prime grade and so on, is a voluntary thing and that some companies actually grade the meat themselves. Is this true?

Mrs. PETERSON. That is correct.

Mr. ROGERS of Florida. And those standards do not always necessarily meet the same standards that the Government standard would meet. Is that true?

Mrs. PETERSON. That is true.

Mr. ROGERS of Florida. This bill does not cover that problem.

Mrs. PETERSON. That is right, it does not cover it.

Mr. ROGERS of Florida. I think it would be helpful if it is not a burden for Food and Drug and Federal Trade, and I know it would be helpful to me to let us have wordage that would amend your present acts that would give you sufficient authority in this field.

As I understand it, the main change for food and drug is in section 5(d). That is the main change, main new authority that would be given under this bill. Is that basically true?



Mr. GOODRICH. There is some new authority in 5(c); the principal reach of the authority is in 5(d) but I would want it clearly understood that there is some additional authority in 4 and in 5(c).

Mr. ELLENBOGEN. Do you want the language to translate into the Food and Drug Act all of the authority in the bill?

Mr. ROGERS of Florida. Yes; where you have to amend the present act, give us the wording and authority and I think it would be helpful to give the Federal Trade the language that would give you jurisdiction over the whole field as you have suggested here, Mr. Chairman.

I know I personally would like to see what wordage this would require and what would have to be done.

I would also wonder if the Food and Drug and Federal Trade could give us a rundown in simple memorandum form on your procedure on cease and desist and what procedures take forth, yours on your seizures and injunctions, and may I ask does the Administrative Procedure Act apply in all degrees in this bill or is it just applying to section 5(d).

Mr. GOODRICH. It would apply all the way across the board. Section 701 (e), (f), and (g) of the Food and Drug Act, according to the finding of the Court of Appeals in the *Willapoint* case that has been mentioned, ties in with the hearing provisions of the Administrative Procedure Act itself. And the bill incorporates, by reference, section 701 (e), (f), and (g) of the Food and Drug Act.

Mr. ROGERS of Florida. So all of your hearings to promulgate any regulations would be under the Administrative Procedure Act?

Mr. GOODRICH. Section 7 of the Administrative Procedure Act provides where a rulemaking hearing is required to be based on the record that it be conducted in accordance with sections 7 and 8 and decision be reached in accordance with that.

Mr. ROGERS of Florida. I notice in 5(d) you specifically mention section 7 of the Administrative Procedure Act. I did not see it mentioned elsewhere.

Mr. DIXON. Mr. Rogers, I think that section 7 procedure is limited to section 5(d) in this bill. There may be a different thought.

Mr. ROGERS of Florida. If you could put your views in writing on that it would be very helpful.

Mr. DIXON. When you were proceeding in the other sections up to (d) here, I think what would have to be dealt with would be as the bill reads would be the general procedures that are followed in the Food and Drug Administration today.

Mr. ROGERS of Florida. If you could give us a memo on that it would be helpful.

(The information requested follows:)

FEDERAL TRADE COMMISSION,  
Washington, D.C., August 10, 1966.

Hon. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the hearings before your Committee on July 28, 1966, on H.R. 15440 and S. 985, both of the 89th Congress, Congressman Paul G. Rogers of Florida requested that I express my views in writing as to the applicability of the Administrative Procedure Act to the regulation-making procedures specified in the bills.

Under Section 5(d) of both bills, the promulgating authority's determination that "the weights or quantities in which any consumer commodity is being dis-

(3) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; and

(4) require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity, except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.

(d) Whenever the Commission determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons the Commission shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, and fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

(e) At any time within sixty days after the publication of any determination pursuant to subsection (d) (1) as to any consumer commodity, any producer or distributor affected may request the Secretary of Commerce to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1448, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, distributor, and consumer representation. Upon the filing of any such request, the Secretary of Commerce shall transmit notice thereof to the Commission.

(f) No regulation promulgated pursuant to subsection (d) (2) with respect to any consumer commodity may—

(1) vary from any voluntary product standard in effect with respect to that consumer commodity which was published—

(A) before the publication of any determination with respect to that consumer commodity pursuant to subsection (d) (1);

(B) within one year after the filing pursuant to this section of a request for the development of a voluntary product standard with respect to that consumer commodity; or

(C) within such period of time (not exceeding eighteen months after the filing of such request) as the Commission may deem proper upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there are presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related commodities of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d) (2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging and the cost to consumers of the commodities affected;

(2) the availability of any commodity in a reasonable range of package sizes to serve consumer convenience;

- (3) the materials used for the packaging of the affected commodities;
- (4) the weights and measures customarily used in the packaging of the affected commodities;
- (5) competition between containers made of different types of packaging material.

#### PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated by proceedings taken in conformity with the provisions of section 4 of the Administrative Procedure Act and shall be subject to judicial review in conformity with the provisions of section 10 of the Administrative Procedure Act. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(b) In carrying into effect the provisions of this Act, the Commission is authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(c) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, or the orderly disposal of packages in inventory or with the trade as of the effective date of the regulation.

#### ENFORCEMENT

SEC. 7. (a) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(b) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

#### REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(e) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.

#### COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

#### DEFINITIONS

SEC. 10. For the purposes of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced

or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum-Toxin Act;

(a) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251-256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257-257i).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity;

(d) The term "person" includes any firm, corporation, or association;

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries; and

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

#### SAVING PROVISION

Sec. 11. Nothing contained in this Act shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Hazardous Substances Labeling Act.

#### EFFECT UPON STATE LAW

Sec. 12. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which differs from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

## EFFECTIVE DATE

SEC. 13. This Act shall take effect on the first day of the sixth month beginning after the date of its enactment: *Provided*, That the Commission may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

Mr. ROGERS of Florida. Let me ask this of Food and Drug. Do you have subpoena power to enforce the cents of provision?

Mr. GOODRICH. We do not.

Mr. ROGERS of Florida. What would your subpoena power go to?

Mr. GOODRICH. We have no subpoena power.

Mr. ROGERS of Florida. How about Federal Trade?

Mr. DIXON. We have all the power the Congress has. You gave it to us.

Mr. ROGERS of Florida. So you would have the necessary power?

Mr. DIXON. We certainly do.

Mr. ROGERS of Florida. Does this 2 ounces and other apply to candy and so on?

Mrs. PETERSON. Yes. The regulations would be promulgated only in product lines where there is confusion in making price comparisons, but commodities under 2 ounces, such as candy and spices, would be exempt.

Mr. ROGERS of Florida. I would like to get your views, giving us just a memo, after you talk to your counsel and inform the Department of Agriculture where you think there is sufficient authority of the Department of Agriculture to do that.

Mrs. PETERSON. Thank you, I appreciate that because we do have points there.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Mrs. Peterson, the other morning in answer to a question by our colleague, Congressman Friedel, you said "standardization of packaging will reduce costs." Would you elaborate on what you mean by "standardization of packaging."

Mrs. PETERSON. I think it is unfortunate to use the word because this is not a standardization bill. It is an information bill—a fact which I think we have to emphasize. What I mean by that is you have enough sizes of weights and quantities standards so you have comparability within a reasonable range but you do have not so much of proliferation. This container is standardized under the voluntary products standards procedures. It comes in 46 fluid ounces. That is already done. Maybe there should be regulations in relation to napkins but it would be up to the industry to determine whether they would have to be packaged in 100 napkins and any other series of numbers.

All we are concerned about is that the consumer have the information. I think it is wrong to call it a standardization bill because it is not that. This is only in this one section of the bill where it is possible to establish a range of weights and quantities.

Mr. CURTIN. I am using your words. You said standardization of packaging would be a good thing. I am just curious what you mean by standardization of package.

Mrs. PETERSON. That is what I mean. Coffee is in one pound, 2 pounds, 3 pounds and it is easy for us to get the price per unit comparisons so it would not be necessary to have regulations in that area.

In the matter of some of these other areas, such as instant tea and coffee where there is much proliferation and it is difficult to compare the different brands with different weights and quantities, such regulations would be a help, so you would again have a regular basis for making price comparisons.

Mr. CURTIN. Mr. Dixon, I am just a little curious about one matter that I touched on before.

Mr. WILLIAMS. Would the gentleman yield?

Mr. CURTIN. I yield.

Mr. WILLIAMS. It is my understanding that all say in the case of corn flakes, several different manufacturers of the same product, that the regular size of corn flakes shall be the same size for one manufacturer as it is for the other, that the giant size will be the same for one as for the other and so on up the line.

Mrs. PETERSON. On the question of the terminology of, the "giant" size, size designations might be decided if the terms were used. The term does not have to be used. In the other case of establishing a reasonable range of weights and quantities it would only be done if first there was a hearing and it was shown that there was such a proliferation of sizes in corn flakes that there would be a recommendation to have corn flakes regulated. I see no such proliferation of these in this area.

Mr. WILLIAMS. Let's assume each one puts out a "giant" size and each one puts out a "giant economy" size and they may even put out a "super economy" size. Is there anything in this bill that would prohibit a manufacturer from putting out another size, such as a "super giant economy family" size?

To what extent does this bill tie the hands of business with respect to meeting competition?

Mrs. PETERSON. It doesn't. In this part of the bill it is a matter of how those words are used. The bill gives the promulgating authority the discretionary power to define standards for characterizing the size of a commodity. If the qualifying words are used under defined terms on the label they would all have the same meaning. It is again the terminology feature of the bill.

Mr. WILLIAMS. In other words, putting out this "super giant family economy" size would amount to grandfather rights, and someone putting out something in the same size would have to use the same name? I am confused as to how far you want this bill to go.

Mrs. PETERSON. I think we want it to go far enough that we do have standard terminology for size designations for supplementary information, where necessary. This is a discretionary provision. We do have to put on the label the weight or quantity. This is where an additional advantage would be given to the consumer in certain product lines.

Mr. WILLIAMS. Is there any way of having that without making them all use the same terminology?

Mrs. PETERSON. I think the regulatory authorities could say how that would be done.

Mr. WILLIAMS. The enforcement authorities are going to tell business that they can or cannot label their sizes in a particular way. Is that correct?

Mrs. PETERSON. It would only be again where the size designations makes purchasing confusing. For example, here are two sizes, one is

called large and one is called medium and both are the same size. There is another package here by the same manufacturer, where one is called regular and one is called economy—it is the same size. This happens to be the same manufacturer. Under the bill there would be the authority, after hearings, to set what these definitions would be.

Mr. WILLIAMS. The only way that could be done would be to require all of them to label their packages in a certain way, and all packages labeled in that way would have to contain the same amount, regardless of the brand?

Mrs. PETERSON. One man's jumbo would weigh the same as the other man's jumbo. They both give the weight clearly. Here is one that says jumbo, "all new, easier to handle". If another manufacturer put it out and there were established size designations, the size nomenclature would have to say the same thing. Here is another one completely fine. This gives the weight. The bill does not require a size designation.

Mr. CURTIN. Let's assume a situation of something like corn flakes. I would presume that the quantity of corn flakes which would fill a quart jar would be different in weight than a quantity of grape nuts that would fill a quart jar. What do you recommend in reference to that?

Would you recommend standard-sized boxes for corn flakes and grape nuts with different ounce contents noted on the label or would it have to be two different sizes in the boxes?

Mrs. PETERSON. I don't think that would be bothered by this at all. There isn't any confusion in that part.

Mr. CURTIN. Which are you going to ask for, two sizes in boxes or just simply the label saying there is a different quantity in the two similar sized boxes?

Mrs. PETERSON. The standard size box would come into effect if there were such a proliferation. I cannot see where there would be confusion in this area. This bill is not directed toward standardizing sizes or shapes at all and where related products of different densities are packaged in a standard size, the bill provides an exemption from weights and quantities regulations.

Mr. CURTIN. Are you saying that you would support a bigger box for grape nuts than for corn flakes, if they were to contain the same weight?

Mrs. PETERSON. It would be just all right so that it shows how much so the consumer knows how much is in the package.

Mr. GILLIGAN. To press the point I made earlier, so long as authority were granted to require the weight, the net contents, whether in weight or fluid measure, to be inscribed on the package in whole ounces, you have what you need. You are not really concerned about the standardization of sizes, if I understood your testimony.

Mrs. PETERSON. This information and a reasonable range of weights and quantities will help a great deal.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. I have just read Mrs. Peterson's statement. On page 7 in the third paragraph you say:

To simplify quantity comparisons which are obscured by different units of weights and measures, the bill requires that when the contents are less than four pounds or one gallon they shall be expressed in ounces or in whole units of pounds, pints or quarts.

They would have to say 1 pound so many ounces, would they not?

Mr. JENSEN. As I understand it, the bill would require on any package less than 4 pounds in weight, or 1 gallon in liquid measure, a label in ounces only; thus mixed units in pounds and ounces below 4 pounds would not be permitted. Whole units of pounds, pints, or quarts would be permitted, but between those ounces and ounces only would be required, so the mixed units would be prohibited.

Mr. FRIEDEL. Up to 4 pounds.

Mr. JENSEN. Up to 4 ounces or 1 gallon.

Mr. FRIEDEL. To keep with the pounds, it would have to be so many ounces, 64 ounces, 86 ounces, then.

Mr. JENSEN. You have too many but that is the idea. Yes, sir.

Mr. FRIEDEL. That is all, Mr. Chairman.

Mr. ADAMS. Following on that, are you stating then that you could not have in liquid measures, half pints? I understand under your required label that you then could not.

Mr. JENSEN. The primary quantity statement would have to be 8 fluid ounces for half pints. They could additionally have half pints.

Mr. ADAMS. One other question is to compare on pages 6 and 7 of the bill under 5(c)(1) or 5(c)(5). Section 5(c)(1) says—  
effective to establish and defend standards for characterizing the size of a package.

Section 5(c)(5) says—

prevent the distribution of that commodity for retail sale in packages of size, shape or dimensional proportions that are likely to deceive.

Would you explain to me why 5(c)(5) is necessary if you have 5(c)(1)? If you can define standards for characterizing size, don't you at that point define and characterize your package without the further language of 5?

Mr. JENSEN. I will start and then Mrs. Peterson would like to speak to this point. I think the committee will find there is no real conflict between 5(c)(1) and 5(c)(5) in the House bill.

Section 5(c)(5) adds authority to regulate shapes and dimensional proportions.

Mr. ADAMS. To characterize size does it not carry with it shape and dimensions?

Mr. JENSEN. I think you could be led to that but as I read this, 5(c)(1) is a vocabulary provision and 5(c)(5) is the standardization provision of sizes and shapes. Then in 5(d) we are talking about the standardization of the quantity of the contents in the package, not the standardization of the dimensions of the package itself.

Mr. ADAMS. Do you agree with that, Mrs. Peterson?

Mrs. PETERSON. In the first part, section 5 in (c)(1), there is the authority to establish and define standards for characterizing the size of the package.

The important part to remember is that it is used to supplement quantity information on the label. This provision refers to words—to supplement the label. Here it is a matter of getting at the definition of the small, medium, and large. Here are two size designations: one says "large" and the other says "medium" and both are the same size. This provision only serves to assure that we all speak the same language.



That is the heart of that part. The other, 5(c)(5), which is the part Mr. Jensen is explaining, is directed at slack fill and deceptive shapes, sizes, and dimensional proportions.

Mr. ADAMS. If you can tell them between medium and large or whatever other designations you might establish then by regulation you say tubes shall be called medium, it follows you have regulated, have you not, your size actually, shape and dimensions?

Mrs. PETERSON. This only establishes standards *defining* the size of a package but it does not authorize any limitation on size, shape, weight dimensions, or number of packages. This is quantity. It is important to remember that a manufacturer is not required to use a size designation.

Mr. GILLIGAN. Just to pursue this point for one moment, Mrs. Peterson, you made reference in your original testimony and in several comments yesterday to the confusion stemming from these additional terms of small, medium, large, jumbo, and so forth.

How many categories would you permit, three; small, medium, and large?

Mrs. PETERSON. As it is now, there are as many as each manufacturer chooses to use.

Mr. GILLIGAN. Suppose he chooses to use it. How many categories would you permit?

Mrs. PETERSON. I think this would be up to the authorities that would sit down and decide how this would be, but this provision is not meant to limit sizes, although it could conceivably arrive at a limited number of designations.

Mr. DIXON. This is called the discretionary section of the bill. When you hold a hearing and it is determined that one of these two tests has been met on the record, then you would announce a procedure where you would go forward and everyone of interest would be notified they could come and speak their piece, pro and con, and if that record, which could be reviewed, did sustain that type of a finding, then you could promulgate a rule.

If you could not, you would do nothing. You could not do anything.

Mr. GILLIGAN. Is it true, Mr. Chairman, that presently, under the Federal Trade Commission Act and the Federal Food and Drug Act, it permits designating packages small, medium, or large, which are deceptive and unfair?

Mr. DIXON. I said it is very clear that the Federal Trade Commission could proceed against such a practice or even under our extended procedures toward what we call a trade rule today but we would still come back to the case-by-case enforcement and if somebody violated the rule we could do that.

This bill merely gives us, I think, additional information or an adjunct or supplemental methods or instructions to solve this problem subject to the checks and balances of judicial review.

Mr. GILLIGAN. To go backward for just a moment again to Mrs. Peterson's original proposal, the difficulty on the part of the consumer is that of determining prices for purposes of price comparison.

If the Food and Drug Act and the Federal Trade Commission Act were amended to provide that all net contents on any packaged product be expressed in terms of ounces as for instance as provided in

section 4(3)(a) on page 3, we would then have the ability or the information available to the consumer to permit him or her to make these rapid price comparisons.

If that were done, what else is necessary to achieve the objectives of this bill? Have we not then done everything that this bill involves?

Is there anything else here that does not already exist in law today which is available to the regulatory agencies?

Mr. DIXON. There are very clearly other sections besides that but when you get to section 5 (a), (b), (c), and (d)—5(d) does deal with what you are talking about, sir, and it would certainly have some bearing on the problem if you approach it that way.

Mr. GILLIGAN. Is the purpose of those sections to facilitate price comparison?

Mr. DIXON. Agreed.

Mr. GILLIGAN. Is it?

Mr. DIXON. To facilitate price comparison and eliminate deception.

Mr. GILLIGAN. But we already have the laws to eliminate deception.

Mr. DIXON. We do not have a law today which very clearly says once and for all you can proceed toward what would be called a rule proceeding. Each time Congress passes a law and says a given functionary down in the establishment has rulemaking power you have delegated a bit of your legislative functions.

This is where the word comes, "quasi-legislative" but mind you Congress never gives you that authority without a very narrow, limited procedure to follow and it is here.

This is all you can do. You do it this way. It can be said Food and Drug today has rulemaking power in the field. We have and we have insisted we have certain types of rulemaking, if you want to characterize it.

I would rather characterize it more as procedural because if it is violated, we still have to come back and go on case by case but you pass this bill and you have passed something very similar so far as the Federal Trade Commission is concerned as the Wool Act, the Fur Act, the Flammable Fabrics Act, and the Textile Products Identification Act.

Here you told us under a preamble that we hold certain public hearings and promulgate for instance, a register of furs. Once we do that, all furs—we have done this—have to be so designated. If anyone does not do this, according to the law, they have per se violated section 5.

We do not have to prove that it is deceptive. Once we did this under mandate, then it becomes ipso facto per se law violation.

Mr. GILLIGAN. In effect you would be asking that this broad authority be extended to every packaged product put on the consumer's shelf—this very broad authority which is now restricted to certain fields where deception even to the expert is a real problem—and carte blanche authority be given to the regulatory commissions to regulate virtually every consumer product that is put on the shelf.

Mr. DIXON. Under the definitions of the terms in the bill this is where the authority would extend. There are limitations on it. I am talking about page 14, section 10. The term "consumer commodity," except as otherwise specifically provided by this subsection means any food, drug, device, or cosmetic as the terms are defined in the food

and drug act and any other article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies—retail sales agencies.

It is clear what this bill means. The hearings have all dealt with what is on the shelf in a store. You don't go to a store. Like my mommy used to say: "Boy, go up to the store and get me 10 cents worth of cheese."

I went up there and said to the man I wanted 10 cents worth of cheese. If he did not weigh his thumb, I got it. Today, I have to pick it out myself. Nobody is going to help me, and this bill is aimed toward that one thing.

**Mr. YOUNGER.** The thing that has interested me about this bill is that you are committing the same fault that you are trying to cure in that you are drafting an idea or a word that is deceptive.

In all of our legislation, I think the chairman will bear this out, in all of those acts that were mentioned we used the words "public interest."

Is that not true? You work under the public interest.

**Mr. DIXON.** We have no right in the private interest, only in the public's interest.

**Mr. YOUNGER.** Now, Mrs. Peterson, do you know of any of the public who are not consumers?

**Mrs. PETERSON.** We are all consumers.

**Mr. YOUNGER.** Then why do you change the terminology of all of the legislation that we have been in? All of these acts that the chairman has mentioned and in which we gave regulatory authority, it is all in the public interest. Now you say it is a catch phrase, the consumer, instead of using "the public."

To me that is purely deceptive. You are giving them an entirely wrong impression that you are segregating the public. Is that not true?

**Mrs. PETERSON.** I am against segregation of consumers. I think if you heard what I said, it includes all of us. We can use public just as well, or maybe we should say the buyer of consumer goods in this case. Maybe that would help.

**Mr. YOUNGER.** Just use the terminology we have used in all of our legislation.

**Mrs. PETERSON.** I am not the drafter of this legislation.

**Mr. YOUNGER.** To me you are trying to deceive the public in saying there are two classes of public, consumer and nonconsumer. I think every member of the public is a consumer. That is one thing. The other is, Mr. Chairman, in legislating in this way, why do we not approach this problem in the same way that this committee approaches these other acts that we passed and have given to your Commission to administer.

As I get it, there are certain things that can be done. In other words, we could enlarge your authority to cover not only deception but confusion, for instance; we could give you authority to proceed on an industry basis rather than a case-by-case basis.

In other words, we could make an amendment to the Fair Trade Act giving those authorities to the Fair Trade Commission.

**Mr. DIXON.** To the Federal Trade Commission. The words "fair trade" gets us both in trouble—Federal trade.

I am not an expert certainly in food and drug but I am reminded that Congress has used the word "consumer" in its basic legislation so the words have been used interchangeably at times, I think.

Mr. RANKIN. Section 401 of the Food, Drug, and Cosmetic Act uses those expressions.

Mr. YOUNGER. There is no question about the expressions being used but all of the acts provide that you act in the public interest. Is that not true?

Mr. RANKIN. In this particular case that I referred to, the provision is that our regulations shall be published in the interest of honesty and fair dealing.

Section 401 says that whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, it goes on to say the Secretary shall publish regulations to establish standards of identity or quality, or fill of container.

Mr. YOUNGER. My point is if we gave this by amendment to your act and amendment to the Food, Drug, and Cosmetic Act as amendments, it would be the normal way to legislation in this field. I am convinced that this legislation is a forerunner primarily to create a Consumer's Department.

That is the ultimate objective of this legislation; otherwise it would have been approached in the idea of amendments to those two acts and I think we could get the same results and not duplicate in this act what you already have authority in the other acts.

Mr. PICKLE. Would the gentleman yield?

Mr. YOUNGER. I yield.

Mr. PICKLE. If I recall your testimony on Monday correctly, you said in your opinion that the primary field this legislation should cover was in the area of economic deception, and it really did not attempt to pertain to health or safety or insurance, and in effect saying that you ought to correct labeling with respect to the Federal Trade Commission and leave the Pure Food and Drug to another time and place. Is that a fair statement?

Mr. DIXON. The thought I was trying to make there, Mr. Pickle, was that historically, although the Federal Trade Commission Act and the Food and Drug Act as such have some overlapping features in them, I think the primary expertise in this Government is in HEW when we are dealing with the health and safety.

Even though we have some responsibility, we clearly recognize this at the Federal Trade Commission. On the other hand, I think the Food and Drug Administration through our relationship with them, we have recognized the fact they have enough to do in health and safety and we have enough to do in our general realm of economic deception.

I suggested to the Senate and to this committee here you may want to change the bill to say something in this regard; this bill now states that what comes within the definition of "food, drugs, and cosmetics" under their law shall be enforced by the Secretary of HEW and all other products by the Federal Trade Commission.

We hear of 7,000, 8,000 products on a shelf and the vast majority of those products are going to fall within the characterization of food, drugs, or cosmetics.

It is not going to be in all other products that are on the shelf and the primary job if it is passed in this form is going to be placed upon Food and Drug to use their procedures.

We must follow their procedures if we promulgate a rule but we would enforce our violations of the rule under our basic act and of course the way we would do it obviously is the traditional way of a cease-and-desist order and then if the order is violated, then a certification for civil penalties.

As I understand Food and Drug, and I would rather for them to explain it rather than I, but I understand they would have to go the seizure method and then at the same time seek from a court an injunction and then if it were violated, go back to that same court and ask for contempt of the order and then the court within its judgment could assess whatever penalties it believed necessary.

Congress has taken care of that for the Federal Trade Commission. In 1948 you amended the Federal Trade Commission Act so that if an order has become final by virtue of not seeking review, a violation of that act on certification could result in a penalty of \$5,000 per day per each violation.

Mr. RANKIN. May I add a comment, Mr. Staggers?

The CHAIRMAN. Yes; you may.

Mr. RANKIN. For the record I should point out, Mr. Pickle, that under the Food, Drug, and Cosmetic Act, the Food and Drug Administration does deal with many economic factors today and we do not joint Chairman Dixon in his recommendation that the sole administration of the bill before you go to his agency.

Mr. PICKLE. Do you all recommend the Senate bill, with modification?

Mr. DIXON. I did not come here suggesting any changes in the Senate bill.

Mr. HARVEY. Would you use the microphone, please?

Mr. DIXON. The Federal Trade Commission came here endorsing the Senate bill. I agreed with the others here at the table if it is the desire to put in, for instance, paragraph 5 on page 7 of your bill, Mr. Chairman, if that is the desire—to straighten out the confusion that might happen, and if you do that with respect to 5(c)(1), if that is the will of the Congress, we will certainly enforce the law that way.

I have said that I think that you don't need to go to that problem. I believe that it is not so bad that we can't handle it under the present procedures, case by case.

Mr. YOUNGER. You would have no objection, Mr. Chairman, if Congress in its wisdom decided to offer the amendments to the Federal Trade Commission?

Mr. DIXON. No, sir; I would not.

Mr. YOUNGER. Would the Food and Drug Administration have any objection in that direction?

Mr. RANKIN. No objection.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Mr. Dixon, in your opinion, does the bill before us, which is not the Senate bill but the House bill, cover any offenses that retailers might make?

Mr. DIXON. On page 2 of the House bill, of Chairman Staggers' bill, section 3(b) says:

The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons are engaged in packaging or labeling of such commodities.

Now the ordinary wholesaler and retailer just does not do that, but, if they do, it would apply.

Mr. MACDONALD. I had two problems, No. 1, where the manufacturer has this thing that Mrs. Peterson was talking about with cents off, without saying what the cents are off. Obviously, the bill would cover it, but how would the FTC with its limited manpower try to enforce this bill against a retailer who did exactly the same thing, just had a section where he had a product and he says 14 cents off?

Mr. DIXON. The bill, of course, says that it would not apply unless he did engage in labeling, we might say deceptively.

Mr. MACDONALD. Mrs. Peterson indicated, and I sort of agreed, that it is deceptive to say 14 cents off and the manufacturer would be covered, but it would seem to me to be even equally deceptive if a retailer—and you say you do have just jurisdiction over the retail in the section—I now ask you the question, do you have the manpower to stop this sort of thing?

Mr. DIXON. I am thinking also of the limitations of jurisdiction. It must be in commerce. That is first. There are some retailers who are in commerce but not many, but there are some.

Mr. MACDONALD. As you know very well the commerce clause has been stretched to fantastic lengths. For the purposes of the Taft-Hartley Act for example it has been held that a window washer in an office that has business that has interstate complications that he affects interstate commerce.

Mr. DIXON. The word "affect" is usually in the statutes that "affect" commerce but this follows the language of the Clayton Act, and uses the words "in commerce" which provides a narrow test. As broad as "in commerce" has been taken, I still say to you that that has to be carried—we recently lost a case under the Clayton Act, just exactly on this point.

Mr. MACDONALD. Although you seemed a little puzzled, and I know I am, your answer is that you would not have any control over the retailer who engaged in deceptive practices.

Mr. DIXON. Unless they packaged it, unless they engaged in this deceptive or confusing label—

Mr. MACDONALD. Aren't they in interstate commerce when they sell stuff from another State?

Mr. RANKIN. Mr. Macdonald, on that point there is a distinction in this bill for the provisions of the Food, Drug, and Cosmetic Act. The Food, Drug, and Cosmetic Act gives us jurisdiction over merchandise as it moves in commerce or at any time thereafter.

But on page 12 of the House bill before you, under "enforcement"—this is section 7, line 7—there is a specific limitation, in that a food, drug, device, or cosmetic is to be deemed misbranded if "introduced or delivered for introduction into commerce in violation of any of the provisions of this act."

In other words, the violation must exist at the time of introduction or shipment in interstate commerce and, as we read the bill, we do not have authority going on at any time thereafter under this language.

Mr. MACDONALD. That is the original question I asked Mr. Dixon. Don't you believe then if the public is entitled to this cents-off type of thing from the manufacturer then it is equally entitled to protection from an unscrupulous retailer?

Mr. RANKIN. I have not regarded the thrust of this legislation being designed to keep a retailer from advertising to me in his store—I am giving 2 cents off on this can or package.

Mr. MACDONALD. Why not?

Mr. RANKIN. Mr. Macdonald, the retailer is able to give a truthful advertisement. He controls the price at which he sells his merchandise and if he has been selling a can of juice at 30 cents and decides to give 2 cents off, he can tell you honestly that he is giving 2 cents off.

Mr. MACDONALD. That is self-obvious.

Mr. RANKIN. The manufacturer on the other hand does not control the price at which the product is sold at retail.

Mr. MACDONALD. To use your illustration, say the product is 30 cents and they put up a big sign 4 cents off and you still pay 30 cents.

Don't you think that should be illegal? Don't you think that is deceptive? Don't you think that is the entire thrust of what this bill is supposed to stop?

Mr. RANKIN. There is no question in the illustration you have cited that there is a deception. I have some doubt as to whether the retailer could get by with it.

If my wife has been buying cans at 30 cents and she goes down and sees a big sign 4 cents off, she knows that is not true. She will go to another store.

Mr. MACDONALD. Mrs. Peterson said that the only test that was run was conducted by the college students—and I do not agree with Mrs. Peterson that they are necessarily the best shoppers in the world—but at least those people were fooled. I will not belabor the point but I think someone on the panel ought to take the stand, yes, we do include deceptive advertising to protect the public or there is no need to.

I don't see where—why you pick on the manufacturer and let the retailer get away with it.

Mr. KORNEGAY. The retailer has the final authority to say what the price will be.

Mr. DIXON. Speaking individually for my agency, the Commerce Department can extend the commerce clause all the way down to the shelf and there would be no question of doubt in my mind that perhaps it would be helpful because if a retailer does this they can be as confusing as anybody else.

This is self-evident.

Mr. MACDONALD. If we do put that in, how are you ever going to enforce it with all of these retailers all over the country with your limited manpower?

Mr. DIXON. The retailers we are talking about, about 20 of the largest chains are selling 70 percent, so we could get them real quick. If you proceeded against them they will tell on the other fellows real quick, too, so we would hear about it.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. In the discussion yesterday, I mentioned provisions in existing law in the case of the milling industry where a product will pick up weight or lose weight, depending on atmospheric conditions. I also made reference to the possibility of a variation in weight because of mechanical equipment which could, to some degree, be inaccurate at times.

I would like the record to clearly show where, in the bill, these variations will be permitted and so that it is a matter of history so that we are sure to be protected. I am sure it is not the intent of the author of the bill to deny this variation. I do think it is important that the record indicate where the variations are permitted, and how.

Mr. RANKIN. Mr. Nelsen, on page 5 of the House bill, section 5(b), there is a provision that allows the promulgating authority to take account of the particular situations that you mention. Under the Food, Drug, and Cosmetic Act, we are also allowed to take account of such variations, and we have done so in regulations, section 1.8 of Title 21 of the Code of Federal regulations. We allow variations from the stated weight or measure when caused by ordinary and customary exposure after the food is introduced into interstate commerce under conditions which normally occur in good distribution practice and which unavoidably result in change in weight of measure.

Also, variations are permitted from stated weight or measure or numerical count when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice.

One more point that should be brought out. Section 11 of the bill provides—

that nothing contained in this Act before you shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act, the Federal Food, Drug, and Cosmetic Act, or the Hazardous Substances Labeling Act.

So the provisions of regulation I have read would remain in effect with regard to flour and other food commodities.

Mr. NELSEN. In order that the record may show the need of this, I might point out that many packaged products in flour must be so packaged that they can breathe. If they were sealed completely, rancidity would develop, and I want this to be clearly in the discussion here so that our intent is fully understood.

One more question. Yesterday in the discussion of the can of peaches that was declared to have a number of servings and obviously a great amount of sirup in the can rather than really having peaches in it, it was my understanding that—in answer to the question—that under the Food and Drug Act something could be done about it if there were a complete misrepresentation. Is that true?

Mr. RANKIN. I will ask Mr. Goodrich, our General Counsel, if he will comment on that point.

Mr. NELSEN. I think there was a case relative to oysters or something that had been in the courts before. Would you refer to that?

Mr. GOODRICH. This was the *Willapoint Oyster* case mentioned by your colleague, where we had established a requirement that an 11-ounce can have 6½ ounces of oysters.



The Court of Appeals for the Ninth Circuit has sustained. We have standards for fill-of-container for peaches, and if the peaches fell below the standard and fill, they would be misbranded. If, indeed, the label represented that there were an excessive number of servings and we could prove that there were not—say, they said they could serve seven and there were only six halves there, there would not be seven servings. We could probably make a case there.

Under this bill, we would be authorized to be more positive and to specify what would constitute a serving, so that if one company represented on its can that this served seven, you could be assured that the other representations of servings would be uniform. That is the new feature here.

**Mr. NELSEN.** How would you arrive at a definition of a serving? I like peaches, and I like the whole peach instead of a half. How would you proceed with this tremendous problem that you have? I am wondering about the administrative procedure and how you would handle it.

**Mr. GOODRICH.** Under this bill, first we would be required to give notice of proposed rulemaking, and invite all interested persons to present their views, and then adopt a regulation. And any person adversely affected would be authorized to object, to precipitate a formal hearing on the record, where we would have the burden of proof, and then to take the matter to the court of appeals, if they disagree. So there are plenty of safeguards.

**Mr. NELSEN.** Do I understand that under the proceedings that you would follow under the terms of this bill, you could proceed on a rule-making basis rather than a case-by-case basis, so that you would then have the authority to say on an across-the-board industrywide basis that this is our rule? Is that right?

**Mr. GOODRICH.** Within the limited authorities within this bill, we would be authorized to specify what was a serving, after a public hearing. We would be authorized to specify what was the large, medium, and other sizes in trade. We would be authorized to control "cents off" promotions. We would be authorized to require a designation of composition where that was especially important. We would be authorized under section 5 to bring some order out of the chaos of proliferating package sizes.

These are the new authorities.

**Mr. NELSEN.** I just doubt that the contingency fund that has been referred to as being in the budget would be adequate to take care of all of the duties that you will have that you cite under this bill.

I might point out that there is some relevancy to this. When I was back home and rented an automobile, on the dash of the car there was a little sticker stuck on with scotch tape made in Hutchinson, Minn., and on it reads: "Post in a conspicuous place in car. Warning"—in big, heavy letters—"this vehicle has a serious defect. It does not have the brains of Nader, Mondale, or Ribicoff." When we go shopping I think of the statement they used to make, that the old Indian said: "Fool me once, shame on you; fool me twice, shame on me."

I just question whether the general buying public, if they are fooled by some trick on a package, will go back for a second helping of it. I wonder how we are going to administer all of this.

I might cite that the many things we are loading on the Government and the tremendous costs involved, also contributes to our deficit spending and devaluation of the dollar. Maybe we should put a sticker on the dollar bill, "Worth 44 cents." Because the public is being fooled pretty much about the value of the dollar.

Mr. ROGERS of Florida. I am concerned about the various enforcement procedures that would be applied under the bill that appear to me to be drawn. For instance, with Food and Drug they would secure an injunction. I understand criminal procedures would not apply.

Mr. GOODRICH. That is correct.

Mr. ROGERS of Florida. With Federal Trade, we have there provision of cease-and-desist orders. I notice now you would have to have some hearings, if you promulgated any regulations which would follow the Federal Food and Drug Act. It is not provided in your law.

Mr. DIXON. Generally, the Administrative Procedure Act we would have to follow. But Food and Drug has already promulgated into law the rulemaking authority and procedure, and this act provides that in that part of the bill which applies to the Federal Trade, that we shall follow this procedure.

Mr. ROGERS of Florida. Would it not be better to amend your law and set that forth, rather than having to refer to some other agency's law for you to abide by?

It is not very good drafting; is it?

Mr. DIXON. It may not be the best, but Congress has done it many times.

Mr. ROGERS of Florida. I don't know if we have done it too many times.

Let me ask you this, Mrs. Peterson. Why are meats and poultry products excluded? Is this not a rather large part—

Mrs. PETERSON. They are now covered by legislation administered by the Department of Agriculture.

Mr. ROGERS of Florida. What sort of remedies do they have? What remedy does the Department of Agriculture have to move against deception or misleading or confusion in the packaging and selling of meats?

Mrs. PETERSON. I think they already have it, I believe it would be well to ask that of the Department of Agriculture. I do know they have some authority, and they do regulate labels in many of these areas.

(The following letter, with attachment, was subsequently submitted by Mrs. Peterson:)

EXECUTIVE OFFICE OF THE PRESIDENT,  
PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS,  
Washington, D.C., August 1, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: During the question period following the Administration's testimony on the Fair Packaging and Labeling Bill, Congressman Rogers of Florida asked that we submit more information on the USDA label review program. In compliance with that request, the following summary, prepared by the USDA, is submitted. (See attachment A.)

Sincerely,

ESTHER PETERSON  
Mrs. Esther Peterson,  
Special Assistant to the President for Consumer Affairs.

## (ATTACHMENT A)

## USDA LABEL REVIEW ACTIVITIES

The U.S. Department of Agriculture conducts label review programs for meat and poultry products as part of its program of consumer protection.

Authority for conducting the label review and approval program for meat is contained in Section 5 of the Meat Inspection Act, and Sections 316, 317, 318, and 328 of the Regulations Governing the Meat Inspection of the United States Department of Agriculture.

Authority for the label review program for poultry is contained in the Poultry Products Inspection Act, Public Law 85-172. The Regulations Governing the Inspection of Poultry and Poultry Products further detail the labeling requirements for poultry and poultry products.

The basic label requirements are the same for both the Meat and Poultry Inspection Programs. Products which are inspected and passed must be marked or labeled when they leave the official establishment. USDA labeling requirements also are comparable and consistent with the requirements of the Food and Drug Administration applicable to foods other than meat and poultry.

USDA has five basic requirements for proper labeling:

1. The true product designation.
2. An ingredient statement, listing ingredients in order of their usage if the product consists of two or more ingredients.
3. A net weight statement.
4. The name and address of the packer or distributor.
5. The inspection legend and establishment number.

All labeling information must be factual and not misleading to the consumer. For example, net weights must be shown on the principal display panel in the smallest unit, such as 1 pound, 2 ounces, rather than 18 ounces. A vignette cannot picture 10 frankfurters when only 8 are in the package.

Restrictions also may be on the colors used on packaging materials. For example, red lines and scatter print on frankfurter or certain sausage items are limited to 50 percent of the package, to assure that the consumer can see the product contained therein.

Standards of identity and minimum requirements for particular components are developed from formulas established by marketing experience, recipes from cook books, consultations with home economists and consumer organizations, as well as industry meetings. Many of these requirements are printed in the Regulations.

Industry is constantly introducing new products. These are reviewed in the kitchens and laboratories of the Meat Inspection and Poultry Inspection Programs.

During Fiscal Year 1966 the Meat Labels Group approved 52,662 new domestic labels and sketches and 2,568 labels and sketches for imported products. Approval was withheld from 1,602 labels and sketches which did not comply with requirements. There are an estimated total of 250,000 approved labels on file.

The Poultry Labeling Group approved 9,329 labels and commented on or rejected 3,629 labels totaling 12,958 labels during Fiscal Year 1966. It is estimated that there are approximately 40,000 approved labels on file.

Mr. ROGERS of Florida. They have criminal or civil authorities. Is there anyone here from Agriculture?

Mr. ADAMS. Would the gentleman yield? Under the Stockyards Act, they have both civil and criminal penalties for improper chickens, poultry, and so on. I don't know about the size and quantity designations.

Mr. ROGERS of Florida. This is what I was wondering about.

The CHAIRMAN. Do we have a representative of the Department of Agriculture here?

Mr. GOODRICH. I can answer the question.

The USDA has continuous inspection of both of these commodity groups.

Mr. ROGERS of Florida. Where?

Mr. GOODRICH. In the packing establishments. And they require, as a part of that inspection authority, the advance approval of the packages and the labeling, and for that reason it was felt by the executive branch they have adequate authority.

Mr. ROGERS of Florida. Would they have the broad authority given by this law?

Mr. GOODRICH. They would have broader, Mr. Rogers, because they would approve each individual package.

Mr. ROGERS of Florida. On a case-by-case basis?

Mr. GOODRICH. When the packer first starts using the package, before he can use it in an inspected establishment, he has to submit it to the inspection authorities here in Washington and obtain advance approval for it.

Mr. ROGERS of Florida. Then that is a case-by-case basis, which is what you are trying to get away from. That is the very intent of this law, is it not?

Mr. GOODRICH. It would be advance approval for pattern of packages for all products to be approved in the future, so it is similar to what we have here.

Mr. ROGERS of Florida. You are saying it is similar to what you are asking for?

Mr. GOODRICH. Yes, except they do it through an administrative examination of the package itself, and we are required to act through public hearing.

Mr. ROGERS of Florida. Do they set any regulation that—as a manufacturer comes in and submits it, do they have a regulation that applies to the whole industry?

Mr. GOODRICH. They have specific regulations and specific regulations on a product-by-product basis.

Mr. ROGERS of Florida. I understood you were trying to get away from this and did not want to have to do it in that way. I understand they look at it ahead of time, and you look at it after it is done. Is that the difference?

Mr. GOODRICH. The difference is we would have to prove the violation in court. They have the advance look at the package itself, with final say-so whether it is OK or not. There is a substantial difference.

Mr. ROGERS of Florida. Do they go to deception or confusion, or must it be false or misleading?

Mr. GOODRICH. I would rather leave the details of that to them.

Mr. ROGERS of Florida. It is my understanding that their law goes to false and misleading, which is what your law presently states you have. But you say that is not sufficient. I think this is rather an important point, Mr. Chairman, that the Department of Agriculture probably should be called in so we can straighten this point out. Because, Mrs. Peterson, isn't this one of the major cost items to the consumer for their grocery bills, meat and meat products, and poultry?

Mrs. PETERSON. It is a big item, but it is covered. The way the meat is packaged today by the individual stores, for example, where you have a unit price, you can figure out the differences. The practice is very helpful to us.

Mr. ROGERS of Florida. I thought I read some of your remarks where you were not pleased with the way some of the meats were packaged.

Mrs. PETERSON. I was talking just now about the way it was priced. When you have the unit price on the meat, that is helpful. The subject you are talking about is another complaint, and that is when you cannot see if you are buying meat or bone or fat.

Mr. ROGERS of Florida. Evidently you are not handling this problem.

For the benefit of the consumer, I understand in bacon sometimes they package it and some of the bacon stops right after the window of the package, and some of it goes the length of the packaging. Are you excluding all of this?

Mrs. PETERSON. It is excluded from this bill.

Mr. ROGERS of Florida. Do you think this is a good idea?

Mrs. PETERSON. I do not know if it should come in this bill, because I do not know the legal jurisdictions.

Mr. ROGERS of Florida. I don't want to embarrass you.

Mrs. PETERSON. I don't know the legal aspects of where the authority for regulating such practices should reside.

Mr. ROGERS of Florida. Don't you think, if we are going to do it for all of the others, should we not get to this problem too?

Mrs. PETERSON. I think this is a good first step in this bill.

Mr. ROGERS of Florida. Would you not recommend that meats or poultry be covered?

Mrs. PETERSON. I think they are covered.

Mr. ROGERS of Florida. If the consumer is——

Mr. CARTER. Would the gentleman yield?

Mr. ROGERS of Florida. I yield.

Mr. CARTER. I doubt if the gentleman from Florida has been to the meat market lately. On each package the type of meat is labeled, the number of pounds and ounces, and also the price per pound, and the total price per package. I really think they are doing quite a good job.

Thank you for yielding.

Mr. GILLIGAN. Isn't that all you are driving at?

Mrs. PETERSON. No, there still is more authority needed as in the section 5(d) where, in certain product lines, there is a great proliferation.

Mr. GILLIGAN. If we get into the elimination of proliferation you are going to standardization, which is what Mr. Curtin was talking about.

Mrs. PETERSON. Let's go back to section 5(d) of the bill. You are only going to use this on weights and quantities when, first, there is a finding and a showing that there is so much proliferation that one cannot make reasonable price comparisons.

Mr. GILLIGAN. Are the reasonable price comparisons made by having available to you the net contents so you can divide that into the price and come up with a unit price——

Mrs. PETERSON. That does help.

Mr. GILLIGAN. Or is it made in terms of the sizes of the packages?

Mrs. PETERSON. If there is a great proliferation you may have to look at 20 different weights or quantities. It would be difficult for the consumer. However, this bill S. 985 does not regulate sizes or shapes of packages.

Mr. GILLIGAN. Then we are no longer talking about price comparison. We are not talking about so much per ounce but we are talking about the proliferation of sizes which means standardization. You are either aiming at that or you are not.

Mrs. PETERSON. In some of those areas it does come to cutting down the number of weights and quantities to a reasonable range.

Mr. GILLIGAN. Then I think the answer on this to Mr. Curtin is "Yes, we are looking for standardization in some areas."

Mr. RANKIN. With safeguards.

May I add that there are safeguards set forth in the bill?

On pages 8 and 9 of H.R. 15440, line 19 on page 8:

No regulation promulgated pursuant to subsection d(2) with respect to any consumer commodity may—

And then if we go to line 18 on page 9:

preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities except to the extent that it is determined that the continued use of such packages for such purposes is likely to deceive consumers.

That determination would have to be through the hearing process, so while the bill does provide for—

Mr. GILLIGAN. Who would make the final decision?

Mr. RANKIN. Either the Federal Trade Commission or the Food and Drug Administration, depending on the commodity.

Mr. GILLIGAN. We already have the statement from Mrs. Peterson that this proliferation of packaging sizes is deceptive and misleading. It makes it more difficult for the housewife or householder to determine what they are buying, so the case has already been decided.

Mr. RANKIN. The bill requires that the determination be made following a hearing on the record.

Mr. DIXON. On that point, Mr. Curtin and Mr. Gilligan, we have pretty well endorsed the Senate bill. We have come here and we have said we would support certainly the Senate version of the bill.

Now what did the Senate pass and what did they mean? We are supporting what they passed and what they mean. It is very simple and they say right here in the report, it says with respect to subsection 5(c)(1) that you are talking about authorizing the establishment of standards for label characterizations of size such as small, medium, and large, for example, where the promulgating authority found that there was significant variation in the use of such characterizations among competing products, the authority could establish uniform standards for small, medium, and large packages in that commodity line.

Now that is the answer to it.

Mr. CURTIN. With all due respect, Mr. Dixon, I am interested in knowing whether you are supporting the provisions of the House bill.

Mr. DIXON. Yes, sir, and you have the identical language in the House bill on this point.

Mr. CURTIN. I will seek to pursue that further in a minute, but I would like to ask Mrs. Peterson another question first as a result of her answer to a previous question.

Mrs. Peterson, if as I understand it your main purpose is to see that the housewife or the ultimate consumer of the product is not deceived

as to the quantity or ingredients that is in a container, why do we need this bill, because we already have laws to cover that situation.

Mrs. PETERSON. I think Chairman Dixon again has answered that pretty adequately.

Mr. CURTIN. I would appreciate it if you would answer it.

Mrs. PETERSON. I think, as he has pointed out, one has to go in on a case-by-case basis. If it were possible to do this on product lines on a quantity basis only where necessary and set rules for the industry, it would be much better for all, both producer and consumer.

Mr. CURTIN. Chairman Dixon, what is your understanding of the situation where a large producer, or a small producer, puts a new product on the market in a new and distinct type of package and perhaps also for a whole new product.

Does he have to come to your Commission or to the pure food and drug agency, depending on the type of product, before he can put that new package and/or new product on the market for you to determine whether or not that is a package or a product that does not deceive the public?

Mr. DIXON. He does not have to but if he wishes to come under our announced policy of seeking an opinion, he can do so.

Mr. CURTIN. How long would it take him to get such a decision?

Mr. DIXON. Depending on what we are asked, I think he could get it very quickly.

Mr. CURTIN. What is very quickly?

Mr. DIXON. In this respect I don't think it would take very long for someone to give him advice.

Mr. CURTIN. How long is very long?

Mr. DIXON. I would say we ought to be able to do it if he would do his part and be above board within a week or 2 weeks.

Mr. CURTIN. You referred, Mr. Chairman, to section 5(c) (3) of the House bill. As I mentioned before, it seems to me that the joker in that section are the words "customarily used." If we have a new package or product, it would not be "customarily used" until it had been on the market for some time.

Isn't that a section where the so-called exemption from restrictive features of the bill does not mean anything?

Mr. DIXON. I think so. The cents off problem—I cannot let it pass. I know this committee, as well advised as you are on antitrust, that we have a law that says it is against the law for you to enforce or enter into an agreement vertically as to what you are going to charge for a price.

So if the manufacturer then puts on that can "6 cents off," he has no authority, except by violating the law, to guarantee that. So, he is going to get caught one way or the other and he is playing with dynamite.

Mr. WATSON. If you believe that strongly, why have you not filed suit against them? You have that authority now. Why have you not filed in the interest of protecting the public?

Mr. DIXON. I am glad you asked me that. We are right in the middle of a suit on cents off on coffee. We have had a public hearing and we are trying to make a determination right now either by guide or by rule to give some guidance in this to this industry.

Now when this bill was first conceived in the Judiciary Committee and I believe originally in the Commerce Committee of the Senate, cents off was in the mandatory part of the bill.

In addressing myself to that, I suggested to the committee that it might be better to put it in the discretionary part of the bill because it was conceivable that this could be done without violating antitrust and it could be competitive and not confusing.

For instance, if I was the first and only producer of a product and I had put it on the market and had established the usual and customary price, even through suggestion, and that could be established by testimony, then if I started a campaign of promotion and said now on this I will give you 6 cents off and he puts it on here and it is suggested and the retailer also follows that down to the letter of the law, then this could be a competitive tool.

But if there are 10 or 12 products on the market and then immediately as a defensive measure, his competitor adopts the same thing and then all 12 do it and then during the year there are 6 price changes but that 6 cents off may stay there all the time, what does it mean?

We are wrestling with that problem right now.

Mr. WATSON. When did you institute that proceeding?

Mr. DIXON. We addressed ourselves to cents off in coffee.

Mr. WATSON. Get back to my question, Mr. Chairman. When was it instituted?

Mr. DIXON. About February or March and that record was——

Mr. WATSON. I do not want to presume too much on my colleague's time, but this has been in effect for many years; has it not?

Mrs. PETERSON. Yes.

Mr. CURTIN. One other question, if I may ask it before we adjourn, and I will be very brief.

We all seem to be agreed, Mr. Chairman, that we presently have laws against deceptive advertising. We presently have laws against not putting on a label what is in the package. We currently have laws requiring that the package indicate somewhere on it the contents of that package, so it would seem that pretty nearly everything that you seek in this bill is already covered by existing legislation.

Now, do I understand it, your only reason for this bill is you want to remove these problems from a case-by-case category?

Mr. DIXON. No; just for the sake of legislation, if I were legislating, I would not come up here and say this is an exercise in futility. I say this does give the enforcement agency a mandate, a direction, a clear expression by the Congress that this is an additional approach that you should take on these specific points enumerated in this bill.

It is very clear that this neither superseded nor does it do any more than supplement in this saving section of the two bills we are talking about, the present jurisdiction of the Federal Trade Commission.

So we are still left with the arsenal of remedies that Congress promulgated but this would be an additional expression by the Congress and it has addressed itself to problems that heretofore we at the Federal Trade Commission have not been too active in.

Mr. CURTIN. What problem have you had in which you have not been too active? And is that inactivity because you have not enforced existing law or because there has been no law for you to enforce?



Mr. DIXON. I read in my statement the other day several cases in this area where we have proceeded case by case. It could be said that we have proceeded many times.

For instance, in the past, we have 3 and 2 for 1 and 3 for 1—all kinds of promotions—that we have found deceptive in certain cases, but we have not proceeded generally across the board nor attempted to do so on just a cents-off basis as such.

Mr. CURTIN. Getting back to my question, is it that you want this legislation—although there would seem to be existing legislation to cover practically everything in the bill—so that you can take the enforcement of violations out of the case-by-case category?

Mr. DIXON. This legislation also has a different statutory basis which we don't have because, as I read to you, in addition to deception, it also has to facilitate price comparisons.

This may not be deceptive to anyone if you could quickly transmit these mixtures of pounds and ounces and make the comparison.

It may not if you are that smart. Still even if it is true, it can be confusing.

Mr. CURTIN. Is that the only new concept in the bill then?

Mr. DIXON. It is fundamentally one thing different laced through the act.

Mr. CURTIN. Except for that we have existing law?

Mr. RANKIN. Not in the food and drug law.

Mr. CURTIN. What is not in the food and drug law?

Mr. RANKIN. The new authority that would be provided to the Food and Drug Administration not provided in existing law would be authority to control the proliferation of different package sizes, subject to procedural safeguards which permit resort to voluntary standards.

Mr. CURTIN. Now, we are getting back to standardization of packaging again.

Mr. RANKIN. Also authority to bring order into package labels for large, jumbo, and so on and the authority to define what constitutes a serving and to control cents-off promotion—

Mr. CURTIN. If I can interrupt you at that point—do you mean we don't have any law about what constitutes a serving?

Don't you think that if a package says on the outside that it is a serving for 10 people and if there are only 3 peaches in the can that that is deceptive?

Mr. RANKIN. No question about that but if there are 13 or 14 or 15 peaches in that 10-serving package, we have no authority to say which constitutes a serving.

Mr. CURTIN. If there are only 3 peaches and it says 10 servings you can take care of that under existing law. If there are 13 peaches in the container and it says 10 servings, then someone downtown will determine what constitutes a serving rather than the person who manufactures the product; aren't we always going to have problems with that question?

Mr. RANKIN. Again there are procedural safeguards. Where the consumer is liable to be deceived and the promulgating authority concludes that in order to avoid deception it is necessary to establish what constitutes a serving, then by the hearing process and based on the evidence of record, we may determine what constitutes a serving.

Mr. CURTIN. Someone is going to have to determine the size of a serving and that depends on how big the appetite is and the likes of the fellow making the decision.

Mr. RANKIN. I have not had time to cover additional authorities but I will stop in view of the time.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Because of the lateness of the hour, I will reserve questions until the return of the panel.

Mr. FARNSLEY. The chairman ruled the other day it was all right for me to make a 5-minute speech unless you object that is what I will do.

I apologize first to Mr. Rogers of Florida for assuming that I knew more about meat grading than he did. It turned out he knew a lot more than I knew about it.

It shows how ignorant a consumer can be. I had been walking around on cloud 7 assuming the Government had been grading all my meat.

Getting back to weights and measures, as we talked about them yesterday, the Government has tried to set up weights and measures and the common law says caveat emptor, let the buyer beware.

I can beware of what I can see or pinch or smell but I cannot beware when it is inside a can or a box. I am sure you are helping me penetrate that can or box. It is very important to poor people that they know about the things inside of cans and boxes.

As I pointed out yesterday they used to have a friendly clerk to help them. If they did not trust him they would not go back. There is no use changing supermarkets—you cannot tell the difference. All I can say is thank you, God bless you, and good afternoon.

The CHAIRMAN. I might say to the panel, we will not require you to come back tomorrow. If you all can come back at a later date we shall appreciate it.

We will proceed with other witness tomorrow.

The committee stands adjourned until tomorrow morning at 10 o'clock.

(The following letter was subsequently submitted by the Federal Trade Commission in response to Congressman Paul Rogers' request:)

FEDERAL TRADE COMMISSION,  
Washington, D.C., September 6, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of my testimony at the hearings before your committee on H.R. 15440 and S. 985, both of the 89th Congress, Congressman Paul G. Rogers of Florida requested that I summarize the procedures followed by the Commission in prosecuting the laws which it administers.

These procedures are set forth in detail in the Federal Trade Commission's Organization, Rules of Practice, and Statutes, copies of which are being sent to you under separate cover for distribution, if you so desire, to members of the committee. However, I shall attempt, as succinctly and briefly as possible, to comply with Congressman Rogers' request.

The basic or principal authority which Congress has granted to the Commission is enforcement of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)). As you know, this section merely states: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

Investigations and inquiries by the Commission to determine whether there are violations of this section, or of any other law administered by the Commission, may be originated upon the request of the President, Congress, governmental agencies, the Attorney General, upon complaints by members of the public or by the Commission upon its own initiative. No particular forms or procedures are required to request such investigations. The only limitation as to investigations, other than those imposed by statute (i.e., the Commission has no jurisdiction over banks), is that the Commission does not initiate investigations, or take actions, upon alleged violations which relate to a private controversy and which do not tend to affect the public adversely.

The Commission encourages voluntary cooperation in its investigations, but where the public interest requires, the Commission may, in any matter investigated, invoke any or all the compulsory processes it is legally authorized to use. Any person under investigation, who is compelled or requested to furnish information or documentary evidence, is advised with respect to the purpose and scope of the investigation.

The Commission may issue subpoenas directing any party to appear before a designated representative of the Commission at a particular time and place to testify or produce documentary evidence or both, relating to any matter under investigation. The Commission also is authorized to conduct investigational hearings (which are to be distinguished from hearings in adjudicative proceedings). Any person compelled to testify in an investigational hearing may be accompanied and represented by counsel in the manner prescribed in the Commission's Rules of Practice.

Under section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) the Commission, whenever it has reason to believe that any party is violating section 5(a) of the act and it appears to the Commission that a proceeding by it in respect thereto would be in the interest of the public, is authorized to issue a complaint against the party.

However, where time, the nature of the proceeding and the public interest permit, the Commission serves a notice upon the party of the Commission's determination to institute a formal proceeding against him and with such notice, it sends a form of the complaint which the Commission intends to issue, together with a proposed form of order to cease and desist. Within ten days after the service of the notice, the party may file with the Secretary of the Commission a reply stating whether or not he is interested in having the proceedings disposed of by the entry of a consent order. If the reply is in the negative, or if no reply is filed within the specified time, the complaint will issue and be served in accordance with the rules of the Commission. If, on the other hand, the reply is in the affirmative, the party will be offered an opportunity to execute an appropriate agreement for consideration by the Commission. The party may appear personally or be represented by proper counsel.

The adjudicative proceedings of the Commission are commenced by the issuance and service of a complaint. The rules of the Commission set forth what must be contained in the complaint, including a requirement that it give notice of the time and place of hearing, which time shall be at least thirty days after service of the complaint.

Where the respondent can make a reasonable showing that he cannot file a responsive answer to a complaint based on the allegations contained therein, he may move for a more definite statement of the charges against him before filing his answer; such motion must be filed within ten days after service of the complaint and shall point out the alleged defects in the complaint.

The respondent named in the complaint has thirty days after service of the complaint to file an answer to the charges contained therein; the Commission's rules set forth what is to be contained in the answer. Should the respondent elect not to contest the allegations of fact set forth in the complaint, he files, in effect, an admission answer, which constitutes a waiver of hearings as to the allegations of the complaint and it, together with the complaint, provides the record on the basis on which the hearing examiner shall file an initial decision.

If the answer is a denial of the allegations of fact contained in the complaint, the "case" then is heard by a hearing examiner of the Commission.

The hearing examiner acts, in a sense, as a trial judge; generally speaking, all motions concerning the case are addressed to him and he makes a ruling thereon. Under certain circumstances, as set forth in the rules of the Commission, interlocutory appeals may be made to the Commission from such rulings.

During the hearings, counsel supporting the complaint has the burden of proving the allegations contained in the complaint.

Within ninety days after completion of the reception of evidence in a proceeding or within such further time as the Commission may allow by order entered in the record, the hearing examiner files an initial decision which includes a statement of (1) findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (2) an appropriate order.

Any party to a proceeding may appeal an initial decision to the Commission, or the Commission itself on its own initiative may place the case on its own docket for review.

Upon appeal from, or review of, an initial decision, the Commission will consider such parts of the record as are cited or as may be necessary to resolve the issues presented; and in addition will, "to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the initial decision." In rendering its decision, the Commission adopts, modifies or sets aside the findings, conclusions and order contained in the initial decision, and includes in its decision a statement of the reasons for its action.

Any party required by an order of the Commission to cease and desist, may obtain a review of such order in a circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. Upon the filing of the petition, the Commission files with the court a record of the proceeding.

The appellate court has the power to enter a decree, affirming, modifying or setting aside the Commission's order and enforcing the same to the extent that it affirms the Commission's order.

The statute (15 U.S.C. 45(c)) provides that "The findings of the Commission as to the facts, if supported by evidence, shall be conclusive."

The judgment and decree of the appellate court is final except that it shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

When an order to cease and desist of the Commission becomes final, either by failure to appeal within the time prescribed by the statute or through affirmance by court action, and it is violated, the respondent is subjected to a fine of \$5,000 per day for each violation (15 U.S.C. 45(1)) which is recovered by a civil action brought by the United States. Furthermore, if an order of the Commission is affirmed and adopted by an appellate court, so that the order of the Commission becomes the order of the court, a violation thereof would constitute "contempt of court."

In addition to the "consent" and "adjudicative" procedures which I have attempted to outline, the Commission, when it has information indicating that the party is engaging in a practice violative of a law administered by the Commission, may, if it deems the public interest will be fully safeguarded thereby, afford such party the opportunity to have the matter disposed of on an informal nonadjudicatory basis. In making this determination the Commission considers (1) the nature and gravity of the alleged violation; (2) the prior record and good faith of the parties involved; and (3) other factors, including, where appropriate, adequate assurance that the practice has been discontinued and will not be resumed.

Also the Commission seeks, wherever possible, by various methods to prevent being required to employ its formal procedures in order to prevent the continuation of acts or practices which may violate any of the laws it administers.

One of the methods is to permit any party to request advice from the Commission as to whether a proposed course of action may violate any of such laws. It is the Commission's policy to consider such requests, and, where practicable; to inform the requesting party of the Commission's views, which will bind the Commission, so that if it changes these views, it will notify the inquiring party and give him an opportunity to conform with the new views. However, a request is considered inappropriate (1) where the course of action is already being followed by the requesting party, (2) where the same or substantially the same course of action is under investigation or is the subject of a current proceeding

by the Commission against the requesting party, (3) where the same or substantially the same course of action is under investigation by another governmental agency against the requesting party, or (4) where the proposed course of action is such that an informed decision could be made only after an extensive investigation.

Another method is that the Commission issues "Guides" which "are administrative interpretations of laws administered by the Commission" and have as their purpose guidance of not only the Commission's staff, but also of businessmen in evaluating certain types of practices which may be violative of laws administered by the Commission.

Still another method is the issuance by the Commission of "Trade Practice Rules" which are designed to eliminate and prevent, on a voluntary and industrywide basis, trade practices which are violative of such laws. They seek to interpret and inform businessmen of legal requirements applicable to practices of a particular industry, and thus provide the basis for voluntary and simultaneous abandonment of unlawful practices by industry members.

The rules of the Commission (Sec. 1.63 of the Commission's Rules of Practice) state that for the purpose of carrying out the provisions of the statutes administered by it the Commission "is empowered to promulgate rules and regulations applicable to unlawful trade practices" (Trade Regulation Rules).

These trade regulation rules "express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers."

They "may cover all applications of a particular statutory provision and may be nationwide in effect, or they may be limited to particular areas or industries or to particular product or geographic markets, as may be appropriate."

"Where a trade regulation rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve such issue, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the particular case."

We have merely attempted to "sketch" various procedures of the Commission.

If there are any inquiries which you or any member of your committee may wish to make concerning this letter or with reference to the Federal Trade Commission's Organization, Procedures, Rules of Practice, and Statutes, we will be pleased to attempt to answer them.

Sincerely yours,

PAUL RAND DIXON, *Chairman.*

(Whereupon, at 12:30 p.m., the committee recessed, to reconvene at 10 a.m., Friday, July 29, 1966.)



## FAIR PACKAGING AND LABELING

---

FRIDAY, JULY 29, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We are continuing the hearings of fair packaging and labeling bills. As is our custom, we shall hear first from Members of Congress in order to facilitate their participation in other meetings.

Our first witness therefore will be our colleague from Pennsylvania, the Honorable John Dent. Mr. Dent, you may proceed.

### STATEMENT OF HON. JOHN DENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. DENT. Mr. Chairman and colleagues, I appear in support of H.R. 15440, the fair packaging and labeling bill, which is identical with S. 985, as rewritten by the Senate Commerce Committee, and my bill, H.R. 16163.

Agitation for consumer protection in the area of packaging has been going on for some years. Both the Kennedy and the Johnson administrations have made strong statements in favor of fair labeling and packaging legislation.

On March 21, of this year, President Johnson sent a special message on consumer protection to the Congress. He said:

*The consumer's interest is the American interest.*

*In guarding it, in promoting it, we improve the lives of every man, woman and child in our nation.*

*Consumers are all people—the worker, farmer, the businessman, and their families \*\*\*.*

President Johnson then urged Congress to enact fair labeling and packaging legislation. He elaborated on his position as follows:

*American industry has made enormous strides in providing attractive and informative packaging. American manufacturers maintain one of the highest standards of quality in the world. They know that packages which accurately and fully describe their wares are the best salesmen.*

*Nevertheless there are instances of deception in labeling and packaging. Practices have arisen that cause confusion and conceal information even when there is no deliberate intention to deceive. The housewife often needs a scale, a yardstick and a slide rule to make a rational choice. She has enough to do without performing complicated mathematics in the stores.*

In addition, the distinguished Committee on Commerce of the U.S. Senate explained the background and need for such legislation as follows:

More than 8,000 promotionally designed packages now compete for the consumer's dollar, where 20 years ago only 1,500 confronted him. In the interim the package on the supermarket shelf has acquired, by default, the informational functions formerly performed by the friendly—or at least familiar—retail clerk. But this informational function has come into increasing conflict with the package's role as its own most enthusiastic advertisement and promotional device. And information has too often suffered at the expense of promotion.

If the consumer is to be capable of making informed choices in today's supermarket, then it is necessary not only to protect him from deliberate frauds and deceptions but to require affirmatively that the relevant information be presented on the package in a coherent and meaningful form and with reasonable uniformity. Moreover, if the consumer is to be able to perform his primary market function of rewarding the efficient producer, then competing commodities must be packaged in such a way as to facilitate clear and easily computed price comparisons.

Briefly, H.R. 15440, would require that:

(1) The labeling of a product contain the name of the product and its producer.

(2) The label contain a separate statement of net quantity of contents, expressed in ounces if less than 4 pounds or 1 gallon. Even pounds, pints and quarts also may be so designated.

(3) No qualifying words or phrases may be used in conjunction with statement of contents.

(4) The statement of contents must be in conspicuous and legible type, uniform in type size and location.

Administering agencies would be given discretionary power to issue regulations on a commodity-by-commodity basis in the following areas:

(1) Definitions of servings.

(2) Use of qualifying adjectives, such as small, family, medium, large, etc.

(3) "Cents off" statements.

(4) Ingredients and composition of consumer commodities.

And finally, when the regulating agencies find that so many weights and quantities in retail distribution of a particular commodity make price-per-unit comparisons difficult, then action would be started to establish standards.

However, such standards are to be determined through voluntary procedures, based upon industry-consumer cooperation. A product-standards committee, composed of representatives of manufacturers, distributors and consumers, and appointed by the Secretary of Commerce, would have 18 months to devise voluntary standards. If agreement could not be reached by such a committee, then a larger representative group, the FDA or FTC, as the case may be, could issue mandatory regulations.

Mr. Chairman, I believe that H.R. 15440 is a good bill, worthy of your considered attention.

Furthermore, in the interests of the vast consuming American public, I urge prompt approval of H.R. 15440 by this committee and subsequently by the House.



The CHAIRMAN. Thank you for your testimony, Mr. Dent.

Mr. DENT. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. If there are no questions we shall continue by hearing our colleague from the State of Michigan, the Honorable Billie Farnum. You may proceed Mr. Farnum.

**STATEMENT OF HON. BILLIE S. FARNUM, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MICHIGAN**

Mr. FARNUM. Mr. Chairman, on June 9, 1966, the Senate, by an overwhelming majority, passed the Fair Packaging and Labeling Act (S. 985). The President has praised this bill as one of the most important pieces of legislation before the Congress this year and one that will benefit every housewife and consumer in this Nation.

Mr. Chairman, a companion bill, H.R. 15440, introduced by our distinguished colleague, the gentleman from West Virginia, Mr. Staggers, is now before the Interstate and Foreign Commerce Committee. It differs in a number of important respects from H.R. 12759, the Fair Packaging and Labeling Act, which I introduced in February of this year. In general, it is not as strong a bill in that it has fewer mandatory provisions, which I will detail later in my testimony. In certain respects, however, I must agree that it is more definitive. Notwithstanding my preference for my original proposal, I wish to say that I support H.R. 15440. It accomplishes most of my objectives in the consumer's interest and it had such unanimous acceptance in the other Chamber that it should have a good chance of passage. I do not want to see another year go by without a packaging and labeling bill, and I hope that all possible steps will be taken to expedite action on it so that, as the President has requested, it will become law in this session of the Congress.

I want to take this opportunity to express my admiration for the outstanding leadership and the diligence of my good friend, the senior Senator from Michigan, Hon. Philip A. Hart, who first introduced this legislation almost 5 years ago. His patience and his untiring efforts—despite many discouragements—have finally borne fruit in this big step toward improvements in the packaging and labeling of consumer goods.

All of us are consumers. All of us shop for hundreds of different articles in a year, and we select from among thousands. Most times, we must select them on our own, off a supermarket shelf, with only a printed label to guide us.

American industry has been ingenious in developing attractive and useful packages for these necessities. Most of these packages are clearly labeled as to their contents and their weight and there is no intent to deceive or mislead the consumer. But there are exceptions. The laws on the statute books—the Federal Food, Drug and Cosmetic Act, for example—punish outright fraud and deception and lay down certain requirements for accurate information. But as we all know, there are many improvements that can and should be made in labeling and packaging to facilitate easy and efficient comparison shopping. Accurate consumer judgment between competing brands can only be made if the consumer has easy access to all the essential facts. But we often have to hunt to find the pertinent facts on a label. We must

turn the package or the bottle over and around to discover how much it weighs and, once we do find that line on the label, the print is often so small that we cannot read it.

Where every penny counts it is most important that we get the best value for our money. For families with very small incomes, like those on the welfare rolls, and for those whose incomes are fixed, like many of our senior citizens, these margins make a real difference. They cannot afford waste. Yet waste is what results today when the shopper is unable to compare to get the maximum value. A careful shopper must be able to compare prices between containers of different sizes and weights, some stated in fractions of pounds, others in fractions of pints and others in odd ounces. As the busy housewife pushes her cart up the supermarket aisle, she does not have the time to do the elaborate calculations which are necessary to convert prices into cost per ounce as per pound. Moreover, she can easily be confused by various come-ons which at best are often semideceptive. I refer to offers of cents off or the implied economies of bigness labeled "jumbo," "giant," and "economy." If she took time to calculate all the costs per ounce, she might find that the "giant economy size" costs more per ounce than the "large" size.

H.R. 15440, the fair packaging and labeling bill would eliminate much of this unnecessary confusion. It would require that every package have a label that clearly states the contents of the container and the name of the manufacturer or distributor, and, in a separate location on the principal panel, the net weight, without any adjectives or qualifying phrases like "big gallon." Moreover, it must be in type sufficiently large and distinct to be easily read. This is a good, strong, clear provision. It makes the statement of net weight mandatory, which my proposal did not. I think this is definitely an improvement. It is a clear, strong "weights and measures" bill.

And the mandatory provision would help with what I call consumers' arithmetic. It requires that if a package weighs less than 4 pounds or contains less than 1 gallon, its net weight must be stated in ounces, unless it is in whole units. For example, if a bottle contains 1 pint 8 ounces, the statement of net weight would read 24 ounces, and another with 1 quart 4 ounces would say 36 ounces, and the shopper would know that she was getting one-third more for her money in the larger bottle.

As I said, all of the provisions of section 4 are mandatory for packaged foods, household supplies, cosmetics, and other articles which are covered by this bill.

In addition, the FDA and the FTC, the agencies which would administer this act, are given discretionary authority to issue other regulations for certain commodities on a commodity-by-commodity basis. Included in this authority is the right to regulate the placement of "cents off" labels and other similar devices indicating that the price is lower than the customary price. This would have been mandatory under my proposal. Frankly, I preferred the outright prohibition of such "come-ons" because they are so confusing.

The agencies are also given authority to define descriptive sizes such as "large", "medium" and "small", to assure that they are not deceptive; to define "servings" so that the word will have some real meaning for the buyers and to require that the ingredients and composition be

stated on the label. Regulations may also be issued to prevent the distribution of any commodity in packages of sizes or shapes or dimensions which are likely to deceive customers. This is aimed at odd shapes, "slack fill" and so forth which makes it very hard to judge contents.

Mr. Chairman, this particular provision is not contained in S. 985, as enacted by the Senate, but I regard it as very useful and very important. I commend Chairman Staggers for reinserting this provision in his bill, and I hope it is retained.

I want to emphasize that in all of these matters of labeling, regulations would only be issued where it was determined to be necessary to prevent the deception of consumers or to facilitate price comparisons.

This legislation also tackles the problem of confusion brought about by a proliferation of packages in so many varying sizes. You have only to look at the arrays of instant coffee, powered soaps and detergents or potato chips, for instance, to understand this problem. Yet it is clear that this multitude of package sizes is not essential to competition or to good marketing. For canned fruits and vegetables, for example, there have long been standard-size cans which make it possible for a shopper to compare the price of a No. 2 can of tomatoes of one brand with another and easily see which is cheaper. She may decide to pay more for her favorite brand, but at least she has a clear basis for choice. However, there are product lines where it is extremely difficult for a shopper to make a clear price comparison. In such cases, for a particular commodity, the administering agencies may move to set up a standard range of container sizes.

The bill provides a procedure for this action to insure that all considerations are weighed carefully and that there are no arbitrary actions. First, the agencies must publish their findings of need and their proposals for container sizes. The industry then has an opportunity to formulate and adopt voluntary products standards under procedures now in use at the Department of Commerce. Producers, distributors, and consumers would be represented on a working party to develop a consensus on a suitable range of sizes. Thus the industry, with others concerned, could develop its own standards, with all the advantages of their own technical know-how.

This bill does not say that bottles or packages must all be alike. They can be different shapes and sizes, as long as they are not deceptive. But it does say that, if the industry so decides, potato chips will be marketed in packages weighing, for example, 6 ounces, 12 ounces, 1 pound, and 2 pounds, or whatever else is reasonable.

Mr. Chairman, this seems to me to be a very ingenious and useful proposal. It permits the industry on its own initiative to help the shopper by making it easier to compare the cost of different brands of the same article. Yet it does not infringe in any way upon the ability to compete. The administering agencies would have to set standards only in cases where industry failed to act on size standards within a period of a year or a year and a half.

Mr. Chairman, I believe that H.R. 15440, if enacted, would represent a great gain for American consumers. It would recognize the great importance of packaging in this self-service era of American marketing, and facilitate the task of the housewife in her daily shopping. It would not alter existing authority under the Federal Food, Drug,

and Cosmetic Act, or the other acts under which the Food and Drug Administration, the Department of Agriculture and the FTC now operate. It represents an improvement and an extension of existing legislation. It would, however, set certain uniform ground rules for all packages and containers for the goods covered by the act, rather than to force these administering agencies to continue to act on a slow case-by-case basis to remedy abuses of the basic tenets of existing law.

Our laws which prevent fraud and deception are invaluable safeguards against unfair competition by a small minority in business. These laws must be strong and well enforced, and so worded that the enforcing agencies have a clear basis to attend to the deceptive practices of that minority. With uniform ground rules established by law for clear labeling, the majority of producers and distributors would know where they stand and would be protected from unfair competition by exaggerated claims on labels.

Mr. Chairman, I hope that this House will shortly have an opportunity to consider this valuable piece of legislation on behalf of consumers.

The CHAIRMAN. Thank you for your views Mr. Farnum. We appreciate your interest in this legislation.

We have one more Member to hear this morning, the Honorable William Moorhead, sponsor of H.R. 16014. You may proceed Mr. Moorhead.

#### **STATEMENT OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. MOORHEAD. Mr. Chairman, I want to express my appreciation to you and to the other distinguished members of this committee for providing me an opportunity to testify on H.R. 15440 and on my own bill, H.R. 16014, which is identical to the chairman's bill.

The fair and efficient functioning of a free market economy is based on the assumption that the consumer is informed.

It is true that the individual consumer has a responsibility to himself and to the free market economy to inform himself as fully as possible about the products he buys. It is also true that the manufacturer and distributor of those products has a responsibility to the consumer and to the free market economy not to deliberately mislead the consumer to make his task of informing himself more difficult or impossible.

There is abundant evidence that there have been labeling and packaging practices deliberately designed to mislead the consumer. This legislation would prevent such deliberately misleading practices.

Contrary to some of the horror stories written about the effect of this legislation, all it would do would be to make sure that labels of packaged consumer commodities provide adequate information to the consumer about the quantity and composition of the packages and to promote packaging techniques which make it possible for consumers to make intelligent price comparisons.

This legislation would not interfere with the fair and efficient functioning of a free marketing economy. Quite the contrary it could be a true fulfillment of the philosophy of the free marketing economy

by making all products more trully competitive for the consumer's dollar.

I urge you to give your prompt approval to this legislation.

The CHAIRMAN. Thank you for your concise testimony Mr. Moorhead.

Mr. MOORHEAD. I appreciate the opportunity Mr. Chairman.

The CHAIRMAN. As our next witness this morning we will have Mrs. Helen Nelson, consumer counsel, State of California.

Mrs. Nelson, would you come forward?

Mr. KORNEGAY. May I interrupt at this stage of the proceedings? I understand the administration witnesses will be back this morning. I conferred with you after 12 o'clock yesterday.

The CHAIRMAN. They will be called back later.

Mr. KORNEGAY. I have a number of questions in a number of areas that have not been covered.

The CHAIRMAN. You will be given an opportunity to ask them.

Mr. WATSON. I would like to say, Mr. Chairman, I have a number of questions, too.

The CHAIRMAN. Mrs. Nelson, you may proceed.

#### STATEMENT OF MRS. HELEN NELSON, CALIFORNIA STATE CONSUMER COUNSEL

Mrs. NELSON. Thank you, Mr. Chairman. For about 7 years I have served as California State Consumer Counsel by appointment by Gov. Edmund G. Brown.

As part of my responsibility I am charged with making recommendations on legislation on behalf of the consumer and it is in that capacity that I appear before your committee.

Also in that capacity I would like to take a second, Mr. Chairman, to thank you and the members of your committee for what you have done for consumers in the automotive safety bill.

I think this will make a considerable improvement to Californians. As you know we are great users of automobiles and we are grateful for the time that you gave to this difficult problem.

The CHAIRMAN. Thank you, you are very kind. I see that Mr. Younger, one of our gentlemen from California, has just come in.

Mr. YOUNGER. We are always glad to welcome Californians to this committee and they always discharge their duties in a manner which brings honor to and credit to our great State. You are no exception.

Mrs. NELSON. Thank you, Mr. Chairman. I shall try to carry on that tradition.

The CHAIRMAN. You may either put your complete statement in the record and summarize it if you care to.

Mrs. NELSON. I will try to summarize it and put in the full statement. I do now urge favorable action on H.R. 15440. I hope we will see it enacted in this session of the Congress.

(Mrs. Nelson's complete statement follows:)

#### STATEMENT OF HELEN EWING NELSON, CALIFORNIA STATE CONSUMER COUNSEL

My name is Helen Nelson. For about seven years I have served as California State Consumer Counsel, by appointment of Governor Edmund G. Brown.

This office was created at the request of Governor Brown by an act of the 1950 Session of the California Legislature.

for more than 50 percent of total domestic sales. For example, it is estimated that the four largest manufacturers in 1965 sold 95 percent of the baby food, more than 90 percent of the soup, more than 55 percent of the coffee, 75 percent of the cake mixes, and 65 percent of the shortening. Among the exceptions are pickles, jams and jellies, and confectionery products, but the tendency toward high concentration generally prevails."

*Poor packaging practices erode the consumer's right to compare prices*

I want to make clear that it is not my position that price alone is the factor determining consumer choice in the supermarket. Many factors enter into the consumer's choice of one product over another. But price is one of the important factors.

I do not think it necessary to dwell upon the fact that it is difficult today to compare prices of packaged products. Testimony from previous witnesses and your own shopping experience (or that of your families and constituents) should establish the difficulty of comparing prices between one package weighing 5.2 ounces, for example, and another of 7 $\frac{1}{2}$  ounces.

This difficulty occurs on different package sizes of the same brand, as well as between competing brands.

The consumer, unable to discern the differences before buying, is unable to act as the "arbiter of the marketplace" and drive out the practice that is unfair to the businessman and to herself.

*New! Painless price increase*—the common practice, engaged in by packagers, of reducing the quantity while maintaining the same price, has proved an effective way of disguising from the public the rise in prices of certain commodities, primarily foods.

I would like to present to this committee two exhibits documented by my office. The product in both cases happens to be instant mashed potatoes.

In one instance, a national food manufacturer helped to conceal a price increase to consumers of 36.6% over a period of less than four years. Four changes in the package in which his product is sold have been documented by my office.

Date	Package price paid by Sacramento consumer	Quantity (ounces)	Price per pound
Prior to January 1962.....	\$0.37	7.2	\$0.82
In January 1962.....	.37	7.0	.84
In May 1964.....	.37	6.5	.91
In January 1965.....	.31	5.25	.94
In June 1965.....	.35	5.0	1.12

Though the quantity was less in each new package, each of these changed packages continued to announce on the label "8 servings."

*Needed—a definition of "serving"*

The conscientious housewife, trying to do a good job of managing her money in the supermarket, and faced with the frustration of comparing fractional quantities by the pound or ounce, may try to use the number of servings per package as a basis for comparing prices.

An example found during our survey of instant mashed potato offerings will illustrate the unreliability of "number of servings" on a package as a guide to comparing prices. It clearly points up the need for establishing and defining what is meant by a "serving" of a commodity.

Shopping in different communities, some of our consumer helpers reported they found two different 1-pound packages of a brand of Instant Mashed Potatoes. Both packages displayed a net content of 1 pound, both were priced the same—79¢—but one claimed to yield 20 servings, the other 25 servings.

Our home economist consultant compared cooking directions on the two different 1-pound packages and we discovered what we suspect is a kind of "Parkinson's Law" for the packaging industry: The number of servings a manufacturer can promise consumers in his package may be increased by the simple device of reducing the size of the serving.

What an easy way to gain a competitive advantage over one's business rivals!

A further example of this kind of hocus pocus can be seen by examining the 12 packages of instant mashed potatoes found in the Los Angeles supermarket:

Three of the packages claim to yield 8 servings each:

One promises 8 servings from its 7 ounces.

One promises 8 servings from its 6¼ ounces.

One promises 8 servings from its 5 ounces.

We asked our home economist consultant to calculate the amount of mashed potatoes we would actually get to eat from each of the 12 packages if we followed cooking directions on all labels. She figures the size of serving ranges from 3 ounces to 4.7 ounces. This is a spread of more than 50 percent.

When one manufacturer calculates the size of a serving 50 percent smaller than does his business rival, he takes an unfair advantage of his competitor—and of the consumer.

*Needed—legally specified quantities in which common consumer products are sold*

I urge this committee to recommend legislation to enable the establishment of legally specified quantities in which common consumer commodities may be sold. There is precedent for such authority to be allocated to government. I have already cited some from California's experience. There is evidence of need. I trust I have added to that evidence.

*Why government?*—the packaging industry has done much to improve its package labels. The cereal manufacturers particularly are to be commended. Yet experience is proving that the economic forces at work are such that industry cannot be sure their voluntary efforts will produce the needed solution.

Let me give you two final examples—illustrating why industry, no matter how well-meaning, can not guarantee orderliness in the marketing of packaged products by self-regulation alone.

A review of the quantities in which vegetable oil has been sold over the last five years illustrates how bad packaging, unrestrained, drives out the good.

A home economist who assisted us in a study of packaging recently was able to obtain 1961 and 1964 wholesale order books from a grocer to compare them with his 1966 order book.

As listed in the 1961 order book, vegetable oil five years ago was comparatively well packaged in standard quantities—pints, quarts, half-gallons and gallons. Of the 17 items available, only one was packaged in a non-standard quantity; but that one exception, left unrestrained, seems to have started a trend.

Three years later vegetable oil was caught up in the packaging explosion. Of 39 available items, 21—more than half—were being packaged in odd sizes. By 1964 oil was being packaged in such unheard-of-before quantities as 12 ounces, 14 ounces, 24 ounces, 38 ounces, 48 ounces and 96 ounces.

Today the proliferation of non-standard sizes for vegetable oil has reached a new high (new low, perhaps, is an apter term). Of the items listed in the grocer's 1966 order book, less than a third are being packaged in standard sizes. 25 of the 36 items available today are packaged in non-standard quantities. Vegetable oil today comes packaged in *seven* different non-standard sizes and only three familiar standard sizes.

In 1962, while making a test of how well consumers could compare prices, one of the 14 products we took observation on was canned dog food. At that time in the Sacramento store we shopped we found the following quantities of canned dog food:

	Number
1 lb.....	5
15 oz.....	4
15½ oz.....	8
1 lb. 10 oz.....	1
15¼ oz.....	1
<b>Total.....</b>	<b>14</b>

Last week we went back to this same store. Of one-pound cans we found *none*! Of those brands which were 15½ ounces four years ago, none are that much today. They are 15 or 14¼.

The brand that was featured as on special weighed the least, 14½ ounces. To me, they all looked the same size.

What was particularly sad to me was that the last manufacturer to abandon the one-pound can (at least so far as observation of Sacramento store shelves reveals) was one of our great nationally respected meat-packing companies.

Neither tradition, nor honor, nor the power of a national name were enough to enable this company to buck the tide and "remain competitive".

Some basic traffic laws to govern commerce in the marketplace, applying equally to all participants, are necessary if we are going to restore and uphold order and fair dealing in the marketplace.

Mrs. NELSON. I feel very strongly that the enactment of this legislation will be a clear signal to the people, that the Congress intends to reverse the decline in the consumers' ability to compare prices and to make clear and intelligent choices in the marketplace.

I think the consumers are looking to the Congress to establish some traffic rules in the marketplace, so to speak.

The CHAIRMAN. I might say that we have another Californian on this committee. It seems we are sort of overloaded with Californians.

Mrs. NELSON. California has quite a lot of citizens.

The CHAIRMAN. I am sure they do but I am not sure about proportions.

Mr. VAN DEERLIN. Mr. Chairman, may I express my embarrassment? I expected to be here in time to present Mrs. Nelson to the committee. She has at least had the effect of starting the committee's meeting more promptly than has been the custom in the past. I have fallen into evil ways, and got here too late to introduce one of the brightest faces in our State government. But I am very happy to do so even tardily.

Mrs. Nelson, as I am sure she has explained, has been in her job since 1959, and I think will bring a fresh viewpoint—which I gather from the first 3 days of the discussions will be very welcome by the committee.

Mrs. NELSON. Thank you, Congressman.

I think that the adoption of H.R. 15440 would support in a way now very necessary the fundamental principle that has made our economy thrive. That is open and fair competition.

Since I have been serving in this job consumers have increasingly brought problems in this area to me as their spokesman and they are insisting that they can't afford to lose the authority to compare products and prices in the supermarket.

Statistics in the State government estimate that consumers spend about \$5 billion a year in California in the supermarkets.

I would not attempt to make any estimate of how much they might save or how much they are losing but, as an illustration, if because of the confusion of packaging today they should lose only as much as one-half of 1 percent of what they spend in the supermarket, assume with better procedures, with easier comparisons they could save even one-half of 1 percent of what they are spending now, that in California alone would amount to \$25 million a year.

So this is a matter of large amounts of money in our economy that we are considering here. Consumers, too, are becoming—are beginning to feel a little put upon by some of the attitudes expressed by some industry practices that for example the supermarkets are really a form of recreation for the consumers, where they go for fun and games.



This may be more true in California than some other places but we are playing horseraces, bingo, and lotto and all sorts of games in the supermarkets in California now.

Prices are rising to the despair of people who are living on fixed incomes.

I think that the people feel that the time is at hand now when we must try to make some basic rules in the marketplace so that we can enjoy the advantage, the many advantages of packages, because there are many, and still thread through this new innovation, this new technological development, thread through it some of our basic principles of free and open competition and fairness in everyday trade.

I think that is what we are trying to do now. It is not easy. I think you have gone a long way in this bill to lay the groundwork for enabling the responsible agencies in the executive branch to do a great deal to restore order in our daily market transactions.

I would point out that the right for everybody who is participating in a free, competitive economy to know what he is buying, to compare products, and to compare prices is very important.

In most of our transactions along the channels of trade, this is pretty well accomplished. When the retailer buys from the wholesaler, or the processor buys from the farmer, there are established units of measures which are common in the trade. In California, for example, the processors buy from our farmers in standard units in standard weights of tons or bushels (and they can compare and negotiate prices on the basis of these standard units).

I think that certainly this is just—just and proper. What is before you it is pretty much the fact that we consumers want to do our buying in the same business-like way.

As an illustration, in California where we have such a large agricultural industry, the food processors, the packers and the shippers have apparently discovered that it is confusing to work in odd sizes and in unlimited numbers of containers.

They have taken the logical course of coming to Sacramento to the State legislature and achieving legislation to specify the numbers of different sizes of containers in which most of our agricultural products may come to market.

We have established in California by legislation at the behest of food processors specified standards of quantity which farmers are required to observe in shipping to food processors 19 different fruits and vegetables.

I have brought for the record and I submit a statement that our department of agriculture has prepared setting forth the specified quantities which the California Legislature has enacted primarily to assist the food processors in our State to deal in standard units of quantity.

So there is a tradition for this and we consumers are, I think, at this point following their sensible lead and saying "Let's carry this standardization all the way through so that we, too, may buy with a greater ability to compare prices."

It is the standard units of quantity that will enable us to compare prices. That is why we are interested in establishing such standards.

Mostly, we are talking about updating our weights and measures law, as I see it. It has been a good 20 or 25 years since there has been

as thorough a review of our weights and measures law. In that 25 years, of course, a great many innovations have occurred.

Essentially our weights and measures laws are based on the assumption, still, which has been true until very recently, that the amount a consumer buys is separated from a bulk of that item, that the merchant reaches into the bin and measures out an amount and weighs it.

With the consumer saying give me a pound of that, the consumer naming the quantity, the consumer is able to look at it and see what he is buying. Having it priced per unit, because there would be no way or reason to price it any other way. For example rice would be priced by the pound.

This is essentially how our weights and measures laws have been constructed and operated for centuries. Now we have the problem of adapting them to the packaging situation.

As I see it, we are in the circumstance now where the package has to serve as the invoice in the transaction. It is the only document there is that passes from the seller to the buyer and that makes a commitment of what is being transferred.

There is no invoice as there is from the wholesale to the retail level or from the farmer to the processor. The only thing that can serve as an invoice, and I think a business-like buying it must be expected to serve as an invoice, is the package itself.

It says what is in it, how much is in it, how much it costs and who is selling it and that is typically what an invoice provides. I think for the consumer to know who is selling it is very important as is provided in your bill. The name and address of the processor, distributor, or manufacturer should be included because he is the person responsible, he is the person who is holding out the package claims and we should know who he is.

There is a theoretical alternative by which we might in some cases achieve some improvement in the consumer's capacity to compare prices. That is so-called economic bargaining. But I see no hope that the economic bargaining of unorganized consumers with the highly concentrated manufacturing industry can accomplish what needs to be accomplished to make it possible for consumers to compare prices.

As the Food Marketing Commission said in its very fine recent report, in its discussion of the dry grocery manufacturing industry, may I quote this?

High concentration is found almost everywhere. The four firms achieving the largest sales volume in each dry grocery product category usually account for more than fifty percent of the total domestic sales.

The four firms usually account for the majority of the business in the dry grocery sales. The four largest manufacturers in 1965 sold 95 percent of the baby food. They sold more than 90 percent of the soup, more than 55 percent of the coffee, 75 percent of the cake mixes, and 65 percent of the shortening.

So we have a high concentration here on the seller side and a group of unorganized consumers on the other side. This is not a situation where the economic forces can bring order.

That is all the more reason why we are grateful to your committee for trying to construct order through the democratic processes.

I expect that you will receive a good deal of testimony about the difficulty that we find today in comparing prices. I want to present some myself, but I want to make clear that it is not my position that prices alone is the factor determining consumer choice in the supermarket. There are many factors that enter into a consumer's choice of a product, but price is certainly one of them and we ought to be able to consider price as one of the factors when we make our buying decisions.

Even if we have chosen a product and we like it, use it regularly, we still ought to be able to recognize when price changes occur in that one product.

I would like to demonstrate for you that we have difficulty today even in comparing prices of the identical package which is not really identical but we think it is.

Let me introduce Mrs. Morica Moore, a housewife and mother, who has volunteered to help me with some of these things.

Mrs. Moore is a resident here in Washington.

The important thing about this is not what particular brand they are, but we have been concerned with this problem in California for some little time and without really trying we have developed a chronological exhibit of changes in prices over a period of 4 years in the same product.

This particular manufacturer achieved a price increase of over 36 percent in less than 4 years by successively changing the weight of the package instead of increasing the visible price. These are all the same brand of instant mashed potatoes. We bought them in the same store. Assume they sit in the same place on the shelf. They are your favorite brand and you go and grab one and that is that.

The first one we bought prior to 1962 contained 7.2 ounces. The package cost 37 cents. This figured out to 82 cents a pound.

We kept on buying them. In January of 1962, the quantity went down to 7 ounces. The price remained the same, achieving a price per pound increase of 2 cents. The price per pound went up to 84 cents.

In May of that same year, the quantity went down to 6.5 ounces, sitting in the same place on the shelf, the same price, 37 cents. The price per pound by that time had gone up to 91 cents.

In January of 1965, they redesigned the package as you can see. It is quite a good bit wider, it is taller, but the quantity in it is now 5.5 ounces, and the price went down on the package, but not by the pound.

It went up again by the pound.

By June, another change in the package, down to 5 ounces, selling for 35 cents, figuring out to a price of \$1.12 a pound—for instant mashed potatoes. The packages look very much alike—very much alike during all of these changes, but they have actually achieved a price increase from 82 cents a pound to \$1.12 a pound.

Mr. FRIEDEL. Put all of those packages together, particularly the last one and the first one. They are taller. Are they the same width?

Mrs. NELSON. No, the last one is narrower and taller but it would sit this way on the shelf so it would look bigger.

We have been talking some about the cost of package changes. All of these package changes must have cost something and the consumer

paid for them. It might be, I would suggest, that we could save money by developing some standard units for selling some of these common products so that we don't have to pay the cost of all of these changes.

This is the same product, very highly advertised. The housewife decides this is her brand, she is going to buy it every time. While this was going on I was receiving mail from consumers saying, "For heaven's sake, what has happened to the price of potatoes." Potatoes in the produce department are sold by the pound and consumers were very conscious that potato prices were going up at the produce counter.

I was not getting the same kind of mail about the packaged product because it was much more difficult to detect the price rise. Consumers were just frustrated in stretching their money in the budget.

That is one example and it is not one of which we can be proud. It is not a very good example of open competition and good dealing between buyer and seller.

Another illustration of this same product but for a different reason—I should add every one of these packages after it was changed in the ways I have designated still read "serves eight." Every one of these packages claimed to provide eight servings. Although the quantities change markedly and they still carried the legend across the front of them "serves eight," which is another reason why the housewife would relax and continue to buy without questioning.

Mr. FRIEDEL. Was the weight included on each package?

Mrs. NELSON. Yes, and especially earlier it was inconspicuous and not on the principal panel but you could find it if you hunted for it in every one of those. It would have to be there to be on the market in California.

I would like to show you one of the problems that we have had. We have worked with voluntary consumers looking into what is on the market in a particular product once in a while. One day we asked about a dozen or so of our volunteer helpers to go to their markets and give us a record of what they found available in instant mashed potatoes all in 1 day.

So they went and recorded what they found and mailed it in to us. We started reading it. We thought that one or the other of the girls had made a mistake because one of them reported finding both of these packages. This package is a 1-pound package well labeled, serving 20.

This package is identical on the front side except it says 1 pound, 25 servings. It is the same quantity, same packager. He just changed his mind about how many servings.

We think since we do have to make our plans in terms of servings there are some commodities such as this one, perhaps a limited number of them but there are some products such as this one where it is very important that we define what a serving is. These all serve eight. Those two which are identical may serve 20 or 25.

The most recent package we have gotten from this packager now contains 15¾ ounces and serves 24, so we are getting kind of confused.

If we want to uphold the basic principle of our economy of free and open competition, I think it is very important that we address ourselves to this problem, because it begins to appear that there is a kind of Parkinson's law in operation here; that is, that the number

of servings a manufacturer can promise consumers can be increased by simply reducing the size of the serving.

In this little survey which we had our voluntary helpers record, we found with the aid of a home economics consultant that out of the 12 packages that we had, following the cooking directions on the back of them, the size of the servings that they yielded according to the manufacturer's own recipe on them ranged from 3 ounces to 4.7 ounces.

That is a spread of more than 50 percent. So it just depends on the size of the serving.

If one manufacturer calculates a serving 50 percent smaller than his competitor, he takes unfair advantage of his competitor but also of the consumer, so we would like some standards here.

I think it is going to be nearly impossible for consumers to compare prices unless we do achieve what your bill enables—the establishment of some specified quantities in which commodities might be sold.

I have charted for you what has happened in the vegetable oil field. I hope you can see this.

Mr. FRIEDEL. I notice on that package "new recipe." Does it require adding more milk or anything to it that would make more servings?

Mrs. NELSON. The recipe for the 20-ounce servings is exactly the same as for the 25. They have reduced it proportionately.

The difference between the 20 and the 25 servings I have here, and I will be glad to leave them for the record.

For the 20 servings, the recipe calls for 2 cups of the potato flakes; for the 25 servings it calls for a cup and a half.

Mr. FRIEDEL. Any other ingredients besides that?

Mrs. NELSON. Yes, you use less water. They have reduced the size of the serving. You use a cup and a quarter instead of a cup and a half, and you use a third of a cup of milk instead of a half. The recipe I would judge would make equally good mashed potatoes but it would make fewer of them.

Mr. YOUNGER. Would the gentleman yield?

Mr. FRIEDEL. I yield.

Mr. YOUNGER. Could that apply to the people who are dieting and do not eat as many potatoes as they used to?

Mrs. NELSON. I feel those of us who feel we need to diet would like to do it in our own way and not have our favorite potato manufacturer figure it out for us without our knowing it.

Mr. YOUNGER. He is helping you out.

Mrs. NELSON. We don't need that kind of a big brother.

The CHAIRMAN. You may proceed.

Mrs. NELSON. This again is a chronology which was derived by a home economist from a grocer's order book. We found a grocer who kept a very untidy office and he did not throw away his old order books so we were able to document the sizes in which vegetable oil was available to him in the wholesale house in three different years—1961, 1964, and 1966.

I will try to distribute a few copies of these so you can see them.

In 1961, we had 17 brands available to the grocer—17 different sizes of vegetable oil. I retract the word "brand." We had 17 different sizes of vegetable oil, 17 different offerings. These 17 different offer-

ings were packaged in four standard sizes—a pint, a quart, half gallon, and a gallon, with one exception. There was one in a 24-ounce size.

I think that this illustrates the impossibility of industry taking care of this problem by their own self-regulation no matter how badly they may wish to do it and I know many of them do wish to do it.

Here is this one that breaks ranks and he goes to a 24-ounce, possibly to compete with the 32-ounce quart. Here you get one nonstandard size.

By 1964, we had a proliferation not only of the number of offerings but we now have 39 different offerings of vegetable oil and 21 of them, the majority, are now in nonstandard sizes.

We have 12 ounces, 14 ounces, 24 ounces, 38 ounces, 48 ounces, and 60 ounces.

Recently, we checked it again. We have 36 offerings this time and 25 of them, two-thirds of them, are nonstandard sizes. The half-gallon has disappeared completely. Instead, we have 38 ounces, 48 ounces, 69 ounces. We have seven different nonstandard sizes now in addition to three standard sizes. We have proliferation of container sizes for this very simple product, a vegetable cooking oil.

Again I remind you all of these changes meant designing new bottles, new labels, these costs went into the cost of this product. So, I would question whether or not to try to hold the line here would mean additional costs. Had we held the line here in 1961 (apparently the consumer was fairly well served), we might have avoided a lot of unnecessary costs that we have had to pay for now as consumers.

One more point and I shall conclude.

In 1962, before we spoke to the Senate committee which was hearing a similar bill, we reported some offerings of common products in one of the supermarkets in Sacramento. One of the products that we reported at that time was canned dogfood, which is a sizable industry in this country, and it is a product which is bought by many people on fixed incomes, retired people, so it will not be without its interest in this discussion.

At the time when we reported the offerings in 1 fairly typical supermarket in Sacramento we found, I believe, 14 different offerings of dogfood. At that time five of them were 1-pound cans. Four of them were 15-ounce cans; three of them were 15½-ounce cans; one was 15¼ ounces, and one of them was 1 pound 10 ounces.

Before my coming here this week we went back to the same grocery store. If you would turn these booklets, "Packages and Prices," to page 22, I would like to review for you the changes that we found today from 4 years ago.

The Bonnie that we listed there 4 years ago at 15½ ounces is now 15. We did not find the Alert on the shelf. The Skippy remained at 15 ounces. The Vets, which was a pound then, is now 15½ ounces. The Red Heart, which was a pound then, is now 15½ ounces. The Dash was a pound then, is now 15½ ounces. We did not find Friskies economy size.

Dr. Ross is still 15½ ounces. Friskies which was a pound then is now 15½ ounces. Calo remains 15¼ ounces. We found three different offerings of KalKan not exactly identical with what was listed

here. They were in sizes of 15½, 14½, and 15 ounces—all less than they were 4 years ago.

The Ken-L Ration which was a pound is now 15½ ounces. The Holsum still remains 15 ounces.

In other words, there is no longer a 1-pound package of dogfood. The unrestrained competition of shaving fractional ounces off of these cans has eliminated the 1-pound can of dogfood.

I think this is a particularly sorry story. By looking around in Sacramento, I found sitting on the shelf side by side Armour's pound can of Dash, about half a dozen of them left. The last one, at least by Sacramento store observation, to depart from the tradition of the pound dogfood.

This is a company that is accustomed to dealing in meats and weights of pounds, hundred pounds, and so forth. Here, sadly, is their new offering. It weighs 15½ ounces. It has a 2-cent-off label that is a part of the label. It does not come off. If they ever depart from the 2 cents off they will have to print a new label.

The old and the new cans sat side by side on the shelf. I picked up one of each. This one said two for 39 cents and this one said two for 35 cents. I took them to the cashier and laid them down on the counter and let him work on the problem. He did for a little while and then he called out the price "38 cents."

I am sure a company like Armour did not submit to this type of thing until they had no other choice. I think we ought not put them and the consumer of their dogfood in the same situation. We need some floor under this so we can have some fair and honest competition. I am grateful to you for making the effort to do this.

MR. ROGERS of Florida. As I understood it this would be a meat product? Would this be classified as a meat or meat product?

Mrs. NELSON. It probably would, yes.

MR. ROGERS of Florida. Under the provisions of this bill it would be excluded from this act. Do you think it should be?

Mrs. NELSON. I think it would be sorry if it were but I would suspect you are right.

MR. ROGERS of Florida. As I understand it under the provisions proposed any meat or poultry products or tobacco product would be excluded from the act from the assumption that the Department of Agriculture has sufficient present authority to prevent deception, but you feel there is deception going on?

Mrs. NELSON. I would not choose to use the word "deception." I would say this is an undesirable form of competition.

The CHAIRMAN. You had expressed in your testimony that you think that competition has forced other companies, reputable companies, to do this and some keep shaving on their products and after a while it means the others have to come to it. Therefore, there has to be a standard somewhere for the consumer.

Mrs. NELSON. Yes.

The CHAIRMAN. I noticed this thing on your potatoes and I thought that was rather dramatic. How much would 100 pounds of potatoes cost on the market today?

Mrs. NELSON. Do you mean retail or at the farm level?

The CHAIRMAN. I have six children and we buy them by the bushel, not by the pound.

Mrs. NELSON. This would depend on the region, but around 10 cents a pound right now in California.

The CHAIRMAN. If you are talking about 50 pounds, it would not be that much, would it?

Mrs. NELSON. If you are talking about a good baking potato——

Mr. YOUNGER. Idaho potato.

Mrs. NELSON. I took care not to say that.

The CHAIRMAN. I do not think there is that much difference in prices where they come from. I wish someone here could give me what a 50-pound bag of potatoes would cost.

Mrs. NELSON. A telephone call to the Department of Agriculture certainly ought to do that.

Another representative from Mrs. Peterson's office says Safeway is advertising them here this weekend in Washington, 10 pounds for 49 cents. That is this weekend.

The potato that goes to make these instant mashed potatoes is not the potato we buy to bake. One of the reasons this packaged product has done so much for the potato farmer is that it makes a market for culls.

The CHAIRMAN. If you take the rise in cost of that first 1-pound package every potato until the last one, it is actually 30 cents on the packaging.

Mrs. NELSON. Yes.

The CHAIRMAN. They were advertising a pound at 30 cents. If you were going to take 100 pounds, that is \$30. That is a pretty good profit to be making.

Mrs. NELSON. We do not object to anyone making an honest profit, but it ought to be possible if there were some rules of competition for them to make a good profit and still sell a plain old-fashioned pound or 8 ounces to the consumer.

The CHAIRMAN. I know you and this committee want fair competition. If they make a good product, they should market it in open, fair competition, but not in any misleading way. That is all this bill is designed to do. There are some who say we should not do anything until we take care of all problems, but we have to make a start somewhere in this world.

Mrs. NELSON. I did not mean to interrupt you, Mr. Chairman, but I think you have started at the most important place and that is to direct the administrative agencies to their responsibility—and this is a new direction that they have—to make it possible to compare prices and to get some floor under the number of sizes of quantities in which products can be packaged.

I think those are the most important points at which to start. If we start there, some of these other things may disappear because they do not work any more.

The CHAIRMAN. I might say to you there are those who say we do not need this bill or anything like it, but I believe we do. I believe the time has come and it is sad that it has, but the Government and the Congress must step in and give some guidelines.

I do not want to regulate industry in any way and I do not think we should make a standardization out of everything, but I do believe



we have to make a start. If we have made a mistake we can amend it, detract from it, or add to it.

Mrs. NELSON. I am very happy to hear you say that.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. I have no questions, but I believe the title of the bill is very good; if we can keep it to that, it will be a very good bill—to regulate interstate and foreign commerce by eliminating the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes.

If we keep to that, we have a very good bill. We do not want a bill requiring that they have to package differently because the producers will pass the cost on to the consumer. We want the consumer to benefit by clear labeling and packaging and I think if we stick to that, we will have a very good bill.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

The question which first comes to mind is how does this bill affect the things that you brought out? In other words, if I understood the panel when they were testifying, if the producer puts a label on the package clearly stating that it had so many ounces that was sufficient, but as far as the servings are concerned, that, of course, is open to correction and the bill probably would correct that.

But so far as labeling that you had so many ounces and weighed so many ounces, where would the bill change this according to your interpretation?

Mrs. NELSON. The bill as I understood it would enable the appropriate executive agency, either the Food and Drug Administration or the Federal Trade Commission—in this case the Food and Drug Administration—to make a definition of “serving.”

Mr. YOUNGER. I am not talking about definition. I am talking about the labeling that it contains so many ounces or pounds and that is all.

Mrs. NELSON. It would do that. What would put a stop to some of this unnecessary and confusing proliferation is provided for, as I see it, in section 5(d) on page 7, which says that whenever the authority determines after a hearing that the weights and quantities in any consumer commodity being distributed for retail sale are likely to impair the ability of consumers to make a price per unit comparison.

Mr. FRIEDEL. Are you reading from the Senate bill?

Mrs. NELSON. No, I am reading from H.R. 15440, the Staggers bill.

Mr. YOUNGER. Your interpretation then is under this bill regulations can be issued which would force the manufacturer to use a certain container weighing a certain amount?

Mrs. NELSON. Yes, that is an oversimplified statement, as I understand the bill. But the bill provides in the case of the mashed potatoes, if the Food and Drug Administration after an investigation decided that the circumstances of sale, the weights or quantities in which this product was being sold were such that they impaired the ability of consumers to make price-per-unit comparisons, they would first publish this determination in the Federal Register.

Then they would promulgate a proposed regulation establishing reasonable weights or quantities. Then, within any time after 60 days

of this publication, any producer or distributor affected could request Secretary of Commerce—

Mr. YOUNGER. I know the procedure, but I am talking about the ultimate goal. Having done all of those things, they could say you must use a can or package in a certain way and it must have a pound or so many pounds. We all agree the servings are wrong, but they do have the authority under this bill to make a change.

Now what authority do you have under the model bill in California?

Mrs. NELSON. We have passed legislation which is to go fully into effect in January requiring that the contents statement be on the principal display panel and require the director of agriculture to specify type sizes, contrasting colors, and so forth that will meet the requirement of being clear and legible.

We have also followed the recommendation of the model law and passed legislation eliminating exaggerating descriptive adjectives preceding the statement "net weight." We no longer have the giant quart in California, but we do not have any enabling legislation such as this that would make it possible with the cooperation of industry to establish some rational sizes or a series of rational sizes.

Mr. YOUNGER. I thought you said a while ago that the law and the authority under the California law permitted you to set the standards for sale in California.

Mrs. NELSON. I am sorry I was not clear. What I was referring to is that I was asked whether each of these packages did carry a statement of net weight. I said, "yes, it did," and it is a requirement of our State law that it must. So it does contain a statement of net weight, but still in such a manner and so obscured by the eight servings—

Mr. YOUNGER. We will omit the servings.

Mrs. NELSON. We already have in California, you are correct, legislation requiring the statement of net contents to be clear and legible.

Mr. YOUNGER. Are there not about 14 States that have that model law?

Mrs. NELSON. I do not know for sure, but there are others.

Mr. YOUNGER. Do you think it would be sufficient if the Federal Government promulgated the standard State law that has been adopted?

Mrs. NELSON. No, Mr. Younger, I do not, because I feel that those laws that we have are insufficient to enable consumers to compare prices.

Mr. YOUNGER. Why did you not change the law in California then to accomplish that?

Mrs. NELSON. Because I would not recommend that at this time on behalf of consumers, because in view of the high concentration of processors and packagers in food, and because of the existing Food and Drug Administration and the relationship that they have with the food processors, I think that most of these foods travel in interstate commerce, and it is more appropriate that the matter be handled nationally by one agency.

Mr. YOUNGER. The bill does not provide that it be handled by one agency.

Mrs. NELSON. By 1 government, let's say, and not 50.

Mr. YOUNGER. But your bill does control the sale of these articles in California. In other words, it had nothing to do with interstate com-

merce, but if they want to sell it in California they must live up to the law that California has prescribed.

Mrs. NELSON. That's right.

Mr. YOUNGER. Then why has not the California Legislature put in this other requirement that you advocate?

Mrs. NELSON. The model law which has been recommended to the States does not make any recommendation that the States attempt to go in this direction. I would say they have refrained from doing that in recollection of the wisdom of dealing with this problem at the national level.

Mr. YOUNGER. If we deal with it at the national level, are the States going to repeal their model laws?

Mrs. NELSON. I think that—

Mr. YOUNGER. You would not have any department then?

Mrs. NELSON. No, our weights and measures people at the State and county level have many responsibilities in addition to the labeling of products. They have the whole responsibility for making sure that packages weigh what the label says they weigh.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. Thank you, Mr. Chairman.

I want to thank you, Mrs. Nelson, for coming here today and traveling this long distance to give us some help and guidance in this perplexing problem and I respect your experience.

You are talking—one thought cross my mind, and I do not want to sound like I am opposed to this legislation, because the idea of the legislation is very good, I think. You were talking about how highly competitive this industry in general is—the food packaging industry. I quite agree with that. It is one of the most highly competitive in the Nation, is it not?

Mrs. NELSON. I do not want to quibble with you, but it depends a little bit on what kind of competition. We consumers would like to have a little bit more price competition and a little bit less promotional competition. But, yes, it is not an easy business to stay in. Yes, that is right.

Mr. MACDONALD. It is my judgment that it is a highly competitive business and, therefore, you made a good deal about the fact that different sized packages or cans came out over a period of years.

My thought, and it is just a thought, is that not because the housewife determines what size she wants to buy to suit her needs and to suit the needs of her family, which might vary from family to family and certainly can even vary in the family from time to time.

As a concrete example, I have four children. When two of them are away at school, the food bills, I hope, go down or certainly they should. Therefore, I would think that my wife, when shopping, would shop differently depending on the time of year. Therefore, I can see a perfectly sound reason for changing the sizes of these things and not to have a standardization where you have a half a pound or a pound or a pound and a half. Some of these odd sizes that you say might just fit the needs of the housewife.

She would have to be awfully stupid to buy something she does not need. I don't think the housewife is that stupid.

Mrs. NELSON. I would agree with your general premises that different families and the same family at different times wish to buy in

different quantities. I hope that nothing I have said here suggests that I believe that everything should be packaged in pound packages. I think that the bill makes it quite possible today to take into consideration what you have in mind, but I cannot stipulate that the housewife decided that she would rather have 7 ounces than 7.2 ounces of instant mashed potatoes, nor that the little old lady who is buying dogfood came to the conclusion that she wanted 14.5 ounces instead of 15 and 16, and telegraphed that to the meatpacking industry.

There is a situation that I saw right in this connection which makes your point. They are coming out with a new smaller can of dogfood. They are coming out with a 6.5-ounce can of dogfood for the toy dog. There is a market; this makes sense, I believe.

They are also coming out with a larger can of tuna than has ever been on the market before. It is sizably larger.

Mr. MACDONALD. Do you not think the main thing in this bill would be the labeling so the housewife herself knows what she is getting and it is up to her to buy what she wants?

Mrs. NELSON. No, Mr. Macdonald; I don't.

Mr. MACDONALD. Would you tell me what you do believe?

Mrs. NELSON. A declaration of policy that it is important for our economy and it is valuable to manufacturers that consumers be able to compare prices. The next most important thing and what makes that public policy function is your provision that with the cooperation of industry, you can—

Mr. MACDONALD. Excuse me for limiting, but my time is limited. How can you compare cost without going on the quality of what you are buying, and what I might like in clam chowder, for instance, you might not like and therefore I would not take the kind you want for anything and you would not take mine for anything.

So, once you go into that, you have to take in the quality of part of it and then it seems to be such a jumble, I don't see how you can legislate that.

Mrs. NELSON. We are not going to the quality in this bill.

Mr. MACDONALD. You have to if you start comparing costs. You have to compare the ingredients of what you are buying. Just because they are both dogfood, one can be a very poor grade and another, if you like the dog very much, maybe you would buy him canned steak. I think once you get into the cost comparison, you have to get into the quality of it, which I think really makes the task of this committee difficult.

Mrs. NELSON. I will not infringe on your time any more.

Mr. SPRINGER. I think this committee is very grateful to you to come all of this way, Mrs. Nelson, to give us the benefit of your thinking. Have you been here the last 2 days?

Mrs. NELSON. I was here only yesterday.

Mr. SPRINGER. The thing which I emphasized during an hour of questioning which Mr. Macdonald has touched on has been the thing that really when you shake this down is what is bothering the committee and we can't understand how you arrive at whether you can or cannot make a decision based on that when it may be a question of choice.

Now, suppose you take Dash, a canned dogfood, which is a good product. About 3 or 4 years ago my wife came home and when I got ready to feed the dog, we put it in the pan and I noticed he only took

a bite or two, I said I just don't understand, the dog is not eating. When I got a smell of this I got an idea of why we changed his food awfully suddenly.

I suppose it would be the same as if you stopped feeding me steak and mashed potatoes and then started feeding me hash. This dog-food situation brought it home to me.

She said she got five cans instead of four cans for the same price. When you are talking about a half percent, I believe I have the figures that the purchase of the family in an average income in this country is somewhere around \$2,000 a year for four people. If you save one-half of 1 percent, say, on buying the cheapest item, I presume you are saving \$10, according to my figures, for the year.

Have I figured this right? You can multiply a lot of people and make \$25 million, but what I am trying to find out is what this does to the individual family.

I would say you can make a lot of errors in the buying of \$10 cheaper if that is what you have in mind. This is the only thing I can come to when you talk about making a choice here—that you are buying a cheaper brand in order to come out with the cheapest item. This is the way I understood Mrs. Peterson and, as I understand you today, when you go to a store you are trying to buy the cheapest item per pound.

This is the only way I believe you are trying to make the best choice. Is that what you have in mind?

Mrs. NELSON. I am sorry you were not here when I discussed that in my presentation. I would certainly not hold to the point that price is the only consideration or is even the major consideration.

There are various factors that go into making a choice. Let's take the wholesaler, the meat-buyer or the potato-buyer. He will consider the grade of the potato, the water content of the potato, the availability of them on the market. He will consider a whole lot of things, but he will be dealing in standard units so that he can compare prices, too. He is interested in price, in addition to quality and availability, and so forth. The price is only one of several factors that goes into his buying decision.

He will want to compare the price of potato calls per hundred-weight with the price of No. 1 potatoes. He needs to buy them both in the same unit of measure and he has that privilege, he buys by the hundred pounds. So it facilitates his using each of these factors and weighing them according to his desires, and coming to a decision. But I would never say price is the only consideration.

I say we consumers, just like everybody else—the wholesaler, retailer, and processor—have the right to consider price. We have a right to a knowledge of comparative price, recognizing we are going to look at several factors together when we make our choice just as everybody else down the line of distribution does.

Mr. SPRINGER. Then you are going to take in this question where you sell two for so much money and three for so much and half a dozen. How are you going to simplify this?

Mrs. NELSON. It would be much easier for the housewife to weigh two for a quarter against two for 33 if the cans were the same size. Every time you increase the variables, if the cans vary and the price varies, pretty soon you have chaos, so you go and play bingo.

Mr. SPRINGER. Is the purpose of the legislation to standardize everything?

Mrs. NELSON. The purpose of legislation is enabling legislation. It enables the specifying of certain quantities in which quantities can be sold.

Mr. SPRINGER. Do you think this legislation will set, then, certain standard sizes of containers or so many ounces, is that correct?

Mrs. NELSON. I would hope it would do that for some common products with the cooperation of industry and in the due process of law.

Mr. SPRINGER. I submitted a question to Mrs. Peterson yesterday which you probably heard and you have potato chips, which this happens to be. The first two brands are two for 17 cents and three for 25. Can you tell me quickly while you are looking at six other articles which of those two buys is the best?

Mrs. NELSON. The 3 for 25 would have the edge.

Mr. SPRINGER. What is your calculation?

Mrs. NELSON. Eight and a third versus eight and a half.

Mr. SPRINGER. It would be one-sixth. Mrs. Peterson could not answer that yesterday. Did you take the benefit of the question yesterday to figure it out?

Mrs. NELSON. It is not fair competition, is it.

Mr. SPRINGER. I will have to give you an A, or perhaps you have done more shopping than Mrs. Peterson, but these are the points that bother us a great deal, when you intervene two other factors, price and quality. How does the poor housewife go to the place where she shops and determine all of these while she is comparing the price? I guess there would be in shopping for dogfood at least six on the counter in most of the big supermarkets. There would be six different kinds if they are displaying all that are available. Some of them only have two or three, but how you get at these two problems in your whole question of calculation in arriving at them is the real problem.

I am not so sure that the question of \$10 can be determined as closely as you have indicated here, if you are talking about the average family in a period of a year saving \$10, or roughly that, as I would figure it, 80 cents a month.

Mrs. NELSON. Mr. Springer, I want to clarify I did that calculation of one-half of 1 percent as an illustration. That is hypothetical I do not contend if you pass this bill, we will save this much, sir. I am saying that we are not discussing pennies here; we are discussing millions of dollars and if we could save as little as one-half of 1 percent, it would mean 25 million in California in 1 year for the families.

I do not assert that it is a precise figure of what people are now unable to control because of the present chaos.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. I appreciate your testimony, too, and I am concerned, as Mr. Macdonald pointed out, it seems to me a difficult thing to pin down the exact pricing comparison that you say you want us to make in a general statement. Yet, when we talk about specifics, then it gets to be difficult, because we do not know the quality and where a bag of potato chips may be made from cull potatoes and have small chips, there may be a difference.

I don't know if they do that, or maybe the can of dogfood is different. I can see what you want is the price per pound or whatever

it may be in the packaging, but as to giving an intelligent comparison as to quality and price and what you are getting, when you are getting a quality pound of meat, choice meat, say in a particular pound can or prime, compared to price, this gets to be a difficult problem.

Mrs. NELSON. When you have the price per pound of both, say, good steak and prime steak, you are then in a position to evaluate the relative cost of superior quality.

Mr. ROGERS of Florida. But the housewife may just take the cheaper goods. Could this not possibly end up by creating a race to present the most inferior product so that the cheapest figure could be put on the label for the quantity?

Mrs. NELSON. I don't worry about that as a prospect. I think consumers have great brand loyalty. I think they buy for many other reasons than price, just as wholesalers and processors do. But I think they feel they are entitled as participants in our free economy to have this one factor of information, just as all other participants in our economy do.

Mr. ROGERS of Florida. Should they also have the information afforded them?

Mrs. NELSON. In many cases it would be desirable, not all of them, but in many cases.

Mr. KORNEGAY. Not long ago I went to the store for my wife and looked at various items, compared them, and picked out the cheapest item I could find. It happened to be a chainstore brand. I got it home and my wife said, "You got the wrong kind of mayonnaise." I said I got the best I could find for the money. She said that is not the kind I want or usually buy, so I took it back and got the more expensive kind.

She is the expert in my family.

Mr. NELSEN. I would like to make some reference to the reference earlier made to the cost of potatoes and the 10-pound box. There could hardly be a comparison between the cost per pound of a raw material as between the cost of a flake potato. Do you have any idea how many pounds of potatoes it takes to make a pound of potato flakes?

Mrs. NELSON. My recollection is that it is seven.

Mr. NELSEN. When I sell 100 pounds of milk from the farm it used to be about \$3.50 a hundred—it has since gone up some—but when I go to buy a quart of milk, it costs a considerably higher rate per unit, but much is involved in packaging and delivery of the product.

You made reference to two packages of equal size, one having in its content less weight of product, is that true?

Do the labels state a difference as to the content?

Mrs. NELSON. These two both weigh 1 pound, but one of them advises that you make 20 servings out of it and the other one advises that you make 25.

Mr. NELSEN. I might also ask, are you critical of the fact that there are two packages, one with lesser weight than the other and no differential in price? Is the criticism on the basis that the product package you are getting is not the same amount? Are you critical

of the way it is packaged where one may have 14 ounces in it and another may have 15 ounces, yet the package is the same size?

Mrs. NELSON. That is not my biggest worry. More important, I think is that we have a sensible understanding between manufacturers and consumers of how many choices of instant mashed potatoes they would like to have; quantities. For example, in Great Britain, for 40 major categories of staples, by law they specify the quantities, 2 ounces, 4 ounces, 12 ounces, a pound and a quarter, and a pound and a half and then regularly stepped-up sizes.

If we had something of that sort, I think the shape and size of the actual container would become less important.

Mr. NELSEN. I am sure you have been in factories where products are being canned or packaged, and the thing that I was attempting to pursue was that I might have a product that I wished to sell if I were in the business, and if I wished to vary package sizes I would have to have a complete new train of packaging that would add considerably to cost and there might be a need of having a package in which the content might vary in weight, yet the package would be the same size in order to keep the cost down as to packaging.

This could be a problem.

Mrs. NELSON. I would say it is a problem that consumers should be willing to go a long way in working with you on.

Mr. NELSEN. The dogfood package that you referred to there, it is properly labeled, is it not? The weight is on the package. There is no deception as to weight?

Mrs. NELSON. The weight is on the package; yes. They meet California law.

Mr. NELSEN. The thing I find difficult to understand is how the things this bill professes to accomplish can really be accomplished. So many times we pass laws with a fancy title to do something and then when we get all through, we find it impossible to handle it. It has been bothering me as to how we are going to get all of these things done.

I am concerned about one thing. This committee has always been very cautious about proceeding on cease-and-desist legislation in anti-trust matters and what have you, placing the accused in a position of being found guilty until proven innocent.

I understand that by rulemaking authority provided for in this bill, the Government or the Federal Trade Commission can set up certain rules whereby the industry is governed by rulemaking, and if a product goes on the shelf that in their judgment is in violation of the rule they have established, the accused are guilty until they prove themselves innocent.

It seems to me we could run into many, many such legal situations and the fine is quite heavy.

Mr. MACDONALD (presiding). I am sorry, the time of the gentleman has expired.

Mr. KORNEGAY. Like my colleagues, I want to thank you very much for coming and giving us the benefit of your experience. Quite obviously, you have worked long and hard in this area and I know you are generally concerned, as I know the members of the committee are, with respect to any unfair practices that are going on in the market.



I would like to see those small boxes of potatoes again, if you don't mind. Are they in the original packages or dummy packages?

Mrs. NELSON. They are in the original packages.

Mr. KORNEGAY. I didn't know if you made up dummy packages or not.

Mrs. NELSON. It is not our desire to embarrass anyone, but I didn't want to bring dummy packages to the U.S. Congress.

Mr. KORNEGAY. I wanted to find who put them out.

Mrs. NELSON. That is not my purpose in bringing them.

Mr. KORNEGAY. These are Betty Crocker-marked potatoes. Some of them are mashed potatoes and some are potato buds. What is the difference between mashed potatoes and potato buds?

Mrs. NELSON. The Agricultural Research Center in Albany, Calif., tells us there is none essentially, that the recipe stays the same, and the nutritional value is the same.

Mr. KORNEGAY. Is the recipe the same in all of these examples that you have shown?

Mrs. NELSON. Yes.

Mr. KORNEGAY. The main complaint, as I understand it, is that they decrease the contents while the price remains constant and the package remains constant; is that right? In other words, the consumer thinks he is getting as much as he got the last time, but there has been a decrease——

Mrs. NELSON. The price increase is achieved by diminishing the quantity in the package rather than by an increase in the cost or the price for the package.

Mr. KORNEGAY. Would you say that is deceitful?

Mrs. NELSON. I don't think it is fair competition.

Mr. KORNEGAY. You would say it is unfair then?

Mrs. NELSON. Yes, I do not think it is the kind of economy we are trying to build in this country.

Mr. KORNEGAY. Did you call this to the attention of the Federal Trade Commission?

Mrs. NELSON. I see no violation of current law in that.

Mr. KORNEGAY. The Federal Trade Commission has the authority to stop any unfair trade practices. If this is unfair, then as I understand the present law, that is covered, and Mr. Dixon has testified he has very broad authority in this field although he does wish some new direction.

Mrs. NELSON. I think this bill would give him that new direction.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Curtin?

Mr. CURTIN. I quite agree with you, Mrs. Nelson, that we should do something about this marking of "servings" on a package, but I do not feel that an official definition of what constitutes a serving is going to solve a problem. I can very easily see where perhaps the official downtown who is to decide may not agree as to the amount in a serving with someone who is consuming that product, particularly if the definer of the "serving" does not have the same appetite as the consumer. He may not like soup, so to him a cup would be a serving; the consumer might be very fond of soup, so, to the consumer, an ample bowl of soup is a serving.

It seems to me the best thing would be to eliminate the use of the word "serving" completely from labels. Would you agree to that?

Mrs. NELSON. I would not.

Mr. CURTIN. I believe you also favor the standardization of packaging. Is that correct? Do you want all packages to be standard as to size, shape, and weight of contents?

Mrs. NELSON. No. What I think is very valuable about the bill before you is that it would enable—under the aegis of the Government—it would enable industry and consumers to get together and agree upon some choices of quantities in which a commodity could with fairness and usefulness be put on the market.

Mr. CURTIN. Let's follow that a little bit further. Using that illustration, I would presume that you would think that all baked beans, for example, should be in 10-ounce cans, so that when a woman is in a store trying to decide which kind she wants, she can base it purely on what the price is for one can as against the other. This, of course, disregards quality. If you have a situation where one processor thinks the 11-ounce can is the size he wants to sell as against another who thinks he wants to produce a 9-ounce can, it is going to cause confusion.

Mrs. NELSON. It is presently causing great confusion.

Mr. CURTIN. Then you would think they should all be in 10-ounce cans?

Mrs. NELSON. No.

Mr. CURTIN. What do you think?

Mrs. NELSON. I think the manufacturers of soup, who are only four or five, might get together, as this bill would make possible, with some representatives from consumers and retailers possibly and discuss and possibly reach some agreement.

Mr. CURTIN. Do you mean as to how many ounces they are going to put in a can of soup?

Mrs. NELSON. As to what sizes of cans of soup we would be marketing in the future.

Mr. CURTIN. Then you are for standardization of sizes for cans?

Mrs. NELSON. I would have no interest in the shape, the size, the dimensions of the container. I do wish for some standardization of the quality in the container, so that we have the equivalent of a pound or a half a pound.

Mr. CURTIN. On the question of soups, I understand that a certain number of ounces of one kind of soup would certainly be different in volume than the same number of ounces of another kind of soup depending on the density of the product, so you could not have the same size can containing the same number of ounces of all kinds of soup.

Mrs. NELSON. This could very well be the result that would come out of such a meeting.

Mr. CURTIN. I think that might be difficult. At any rate, you heard, I believe, the panel that was here yesterday?

Mrs. NELSON. Yes.

Mr. CURTIN. You heard them say—at least as I understood them to say—as long as a label contains the number of ounces in that container, as long as that label contains what the product of that container is, that would be perfectly legal under this particular legislation, regardless of the size and shape of the container.

Did you understand them to say that? In other words, they said as long as a label clearly defines the ounces in the can, or the carton, or the jar, and as long as the label clearly indicates what is in that container as to product, that would be sufficient under this legislation, regardless of the size or shape of the container.

Mrs. NELSON. That is the only part of this bill which is so-called mandatory, as I understand it.

Mr. CURTIN. Yes; that is true. It is mandatory that the label be truthful.

Mrs. NELSON. That would be the only thing that would automatically apply when this law went into effect.

Mr. CURTIN. You are going beyond what this legislation would require then?

Mrs. NELSON. My views are that we need everything in this bill.

Mr. CURTIN. But do I understand that you feel we need more? Do you feel that there should not be odd-sized containers put on the market such as 12.5- or 14.5-ounce cans? You are objecting to the Dash cans because the label says that the product weighs 15.5 ounces? What is deceptive in that can?

Mrs. NELSON. I have not and do not assert that either of these cans is deceptive.

Mr. CURTIN. If a manufacturer wants to put on his container that it contains 15.5 ounces of a product, what is deceptive or what is misleading in that label?

Mrs. NELSON. Nothing.

Mr. CURTIN. Then why do you object to it?

Mrs. NELSON. Because sitting on the shelf with other products from other manufacturers and in relationship to perhaps the previous can from the same manufacturer that sat on that shelf, the consumer cannot compare prices and make an informed decision.

Mr. CURTIN. She can if she reads the label and one label says 16 ounces and one says 15.5, and she is buying strictly on volume.

The CHAIRMAN. The gentleman from California.

Mr. VAN DEERLIN. The committee has been very impressed by Mrs. Nelson's testimony and her skill in handling questions.

In light of the industry's desire to keep certain promotional gimmicks, and the housewives desire to keep such things as trading stamps and coupons, I would appreciate an evaluation by you of cents-off gimmicks and the other promotional devices that I have mentioned. What would be acceptable to you as a consumer counsel in preserving these promotional prices?

Mrs. NELSON. I think we are going to have some promotional gimmicks. We have them in other places than the grocery store, so I am not going to strike out across the board about all promotional gimmicks.

Let me talk for a moment about the cents off. I think that the cents-off device has become rampant because the consumer cannot compare prices. We don't know whether this is cheaper than that or whether one is cheaper than it was last week.

When we have 8,000 items, we can't store information in our brain to the same extent that a computer can do. If we had a more orderly market where the consumer could by her own analysis in a reasonable

length of time compare prices, the incentive to the manufacturer to go to a cents-off thing would diminish.

It might not disappear, but it would diminish.

Mr. VAN DEERLIN. You referred in one label to the fact that the 2 cents off was part of the originally printed label at the plant.

Mrs. NELSON. Yes.

Mr. VAN DEERLIN. Are you suggesting this is an impropriety?

Mrs. NELSON. It suggests to me that it is not going to end this week-end. They probably bought a good quantity of these, and it also suggests to me that if they do remove it eventually, they will have the cost of a new label. We are paying costs for lots of labels now that we might not have to pay for if we had shored up, if we had had the provisions of this bill in time to have held the line—and had dog food in 1-pound cans, for example.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. VAN DEERLIN. I yield.

Mr. ROGERS of Florida. Dash is a meat product that would not be affected by this?

Mrs. NELSON. Yes. In general the cents-off gimmick arises, in my opinion, out of the inability of the consumer to tell whether the thing is indeed cheaper this week or not. It is impossible. It is most impossible in instant coffee, where confusion reigns supreme. It is extremely difficult to determine the relative prices.

This is where you get the tremendous number of cents-off and also in household cleaning items for the same reason. It is in those products where it is most difficult to compare prices that you most often get these cents-off gimmicks.

Mr. VAN DEERLIN. What about trading stamps and coupons?

Mrs. NELSON. I think the same thing in general can be said about them, that the consumer in her frustration over comparing prices is diverted by the trading stamp, by the coupon. It is impossible for her to tell whether or not the store that gives trading stamps by and large has higher prices than the one that does not.

Coupons are a very valuable way to introduce a new product.

Mr. VAN DEERLIN. Back here in the East, they even have special deals where if you buy a certain product on a certain day, you get 50 stamps as a premium just for buying the product.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Massachusetts.

Mr. KEITH. I am sorry I could not be here for all of the testimony that you offered. I would just like to put some of these things in perspective. I have looked at your prepared statement and note that you mentioned that if they had overcome some of the problems that you have presented, that they might have saved perhaps \$25 million in the State of California.

That is on the first page of your testimony. How many people are there in California?

Mrs. NELSON. About 19 million now.

Mr. KEITH. So it is about a dollar and a quarter per person per year that would be saved?

Mrs. NELSON. I will take your word for it.

Mr. KEITH. The \$25 million that would be saved by reason of this present legislation—what do you suppose would happen to that?

Mrs. NELSON. I think I must clarify. This illustration on page 1 of my testimony is not a claim that this bill will save \$25 million. Maybe it will save a whole lot more.

Mr. KEITH. Assuming that it did, what do you suppose the corporations that run the canning companies do with that money?

Mrs. NELSON. I don't know.

Mr. KEITH. They are competing in goods and services with other corporations. The profit that they make enables them to do their research and development and to improve the product as well as the packaging. I don't think it is necessarily adverse to the competitive situation. Some of it undoubtedly helps the consumer.

How often have you used your right or your position to encourage officials of the State government or individuals to take advantage of the present law?

Mrs. NELSON. Very often.

Mr. KEITH. With some success?

Mrs. NELSON. Varying, I have had considerable success on the State level, less on the Federal level.

Mr. KEITH. How many times in the last 5 years have you referred to the Federal agencies?

Mrs. NELSON. I have——

Mr. KEITH. How many times has the State of California protested on behalf of State government or its people to the Federal Trade Commission?

Mrs. NELSON. Fortunately we don't. We have a running correspondence with them. There is a State-Federal liaison and we have a running, working relationship with them.

Mr. KEITH. A lot of problems come up by informal presentations of cases that are informally resolved and no real threat has been posed and no real action has been taken.

You get sort of defeated in detail. But have you ever really pressed a case? How many times have you really ever pressed a case and taken it to court?

Mrs. NELSON. My greatest disappointment has been in trying to urge the Food and Drug Administration to make additional tests of their deceptive packaging law.

They lost a court case which is referred to as the *Delson Mint* case. They felt after that as I got the explanation that their law was simply inadequate and until they had a new law they could not even invest the time and the money against the very slight chance of being successful because of the basic weakness in the law which they had to use.

Mr. WATSON. Mr. Chairman, may I make one observation? I believe it will help the committee and I have no interest in the Pillsbury Co. It is not in my district, but I did not want to leave the impression with this committee nor with those listening that most packages were the same which were purportedly the same, because I have examined them closely and I believe you will agree that although they contain each 1 pound, the size was the same, one was a new recipe which, if you followed it, would give you 25 servings where the other was the old recipe which would only give you 20 servings.

The reason for it is there was a difference and a substantial difference in the additives or the mixtures. Is that not correct?

Mrs. NELSON. I believe so. The 25 servings were smaller.

Mr. WATSON. If you will look on the package it says twenty-five 4-ounce servings and then you will have a difference in the mixture.

I am sure you ladies will follow the recipes, but it seemed to be patently wrong, Mr. Chairman, I examined it closely and I wanted to bring it to the attention of the committee and to those listening.

I have the three recipes typed out and I will leave them for the committee.

The CHAIRMAN. They will be inserted in the record.

(The document referred to follows:)

When package claims to offer increased number of servings, size of serving is reduced. Example:

*Pillsbury Instant Mashed Potato*

[4 servings as stated on the package]

	1 lb. pkg., 20 servings stated	1 lb. pkg., 25 servings stated	15¼ oz. pkg., 24 servings stated
Water.....	1½ cups.....	1¼ cups.....	1¼ cups.
Butter.....	2 tbsp.....	2 tbsp.....	2 tbsp.
Salt.....	¼ tsp.....	¼ tsp.....	¼ tsp.
Milk.....	½ cup.....	½ cup.....	½ cup.
Potato flakes.....	2 cups.....	1½ cups.....	1½ cups.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. You are contending by this legislation that it is the right of government to take care of that situation where the cost of food increases rather than permit a decrease in the quantity of a package to require an increase in the cost of that package; is that right?

Mrs. NELSON. This would be done on a commodity by commodity basis.

Mr. SATTERFIELD. I believe in answer to a question from the gentleman from Pennsylvania you said it was not the size or shape of the package or can you are talking about but the quantity contained it.

Am I to judge that what you are really saying is that regardless of the size a container might end up being, you feel that products of a like nature should be packaged in the same quantities or in containers of the same net weights?

Mrs. NELSON. Yes, or a series of them, not necessarily just one.

Mr. SATTERFIELD. I understand in the canning industry there are standard sizes of cans.

It seems to me, that depending on the density of the product we might find that a standard size can today would not hold exactly one pound or any other required specific weight of a given product.

Would it not then require that a manufacturer, in this circumstance would have to have made for him special size cans so that he could package his product in the required weight?

Mrs. NELSON. They—theoretically that is possible, but speaking from the consumer point of view, the canned product is not the top priority problem.

Mr. SATTERFIELD. I realize it is not. You were talking about canned Dash here, which I think was an excellent example. You said

there were 15½ ounces in the can. I doubt if any standard-sized can would hold exactly 1 pound of this product since the one holds 15½ ounces.

Mrs. NELSON. This one has 15 ounces.

Mr. SATTERFIELD. Taking into account the density of the product to be put into the can, would it not be a fact that the product having the least density would end up with the largest size package which of itself would be likely to be more appealing to the shopper?

Mrs. NELSON. It could be, but you—if you have some discrete differences. Again let me refer to the British system. They have 2, 4, 8, and 12 ounces. You would have to blow up a 4-ounce package an awfully lot to make it look like an 8-ounce package, so there is not the same risk of confusion there.

Mr. SATTERFIELD. If we are going to have a standardization of 2-, 4-, 6-, 8-ounce packages, aren't we really talking about having to have a whole lot more different sized containers than we have today just by virtue of the density and weight of the products going into these containers?

And is it not equally true that to require this we are going to raise the cost of all products because of the increased costs in packaging?

Mrs. NELSON. On the contrary, I would hope that wisely administered this could lower prices.

Mr. SATTERFIELD. Do you know of any investigation or have you made any investigation or has the State of California attempted to ascertain in any way what the economic effect of regulations under this act might do to the cost of food?

Mrs. NELSON. No.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

Mr. CARTER. I believe the idea of legislation is to give some comparability between the costs of similar items in certain cans. You have a comparison of the same type of foods.

Mrs. NELSON. We are striving for such sufficient order that it will be possible with reasonable effort to compare prices of similar foods.

Mr. CARTER. For instance, 1 pound, 6 ounces of lomolinda wheat costs, per pound, 32.7 cents, and Quick Cream of Wheat costs 28.6 cents per pound.

Of course there are different prices. You would ask for a standardization so you could compare relative costs of these two items; is that true?

Mrs. NELSON. Yes.

What are we going to do with the item of lomolinda and an offer of three silver spoons for 50 cents plus one box top, this distorts the possibility of comparison.

Mrs. NELSON. I would leave that alone.

Mr. CARTER. How would we determine the equity in the three silver spoons so we could make an adequate comparison? Would that be possible? We get on down to special offer on Mother-In-Law dresses and so on. When you purchase one item you also have an equity in that dress.

Regardless of the ounces and the price per-pound of these items, we have other things coming in. The equity in the first case, in the Mother-In-Law dresses, I am thinking of the purchase of this food in comparison with another item which does not offer a dress.

What are you going to do about that? How could you compare these prices?

Mrs. NELSON. Leave it alone.

Mr. CARTER. Then that does away with our comparability if we do that. You cannot make an accurate comparison then.

Mrs. NELSON. If the consumer can compare the money she has to lay out for the same amount of one product versus another, then like comparison of quality, comparison of the value of the premium is a separate consideration.

Mr. CARTER. It is a rather difficult comparison to make on such an additional offer. It make it much more difficult to adequately compare two items when we have other things thrown in. For instance, as the distinguished gentleman from California mentioned, the bonuses which one gets make it difficult, too.

Thank you.

The CHAIRMAN. The gentleman from Ohio.

Mr. GILLIGAN. Thank you, Mr. Chairman.

Dr. Carter just brought up a point, as did Mr. Van Deerlin earlier, that was on my mind. You speak in your pamphlet and in your prepared statement, Mrs. Nelson, of the consumers' right to know what then she is getting for her dollar.

Mrs. Peterson complained, and you echoed the complaint, of the difficulty of dividing fractions and so forth. If you take into account the computations that have to be undertaken in order to know what you are buying when you are buying coupons on silver spoons, or as I was checking out of a grocery store last night, they threw in something that goes into a bingo game.

Now what are my odds of winning in that bingo game as against the price of the articles I bought? I think one of the things that may be troubling the committee is, granted the marketing system in this country is not perfect, but is the cure offered to us here more dangerous than whatever diseases afflict the marketplace?

I notice for instance your rather brief reference on page 4 of your prepared statement, if we cannot see the product, we need to find on the package clear, readable, and accurate statements of the ingredients and quantity and then in many cases we may need to find a declaration of Government grade of quality and a recognized standard of size.

Would it be your idea then, in order to do the job necessary to help the housewife, that the Government not only standardize weights and so forth of which consumer products may be sold but get into a Government grading system of these various products?

Mrs. NELSON. The Government is in the business of grading products. Practically all grains, foods, fruits, vegetables, are sold in this country from the farm all the way down to the consumer by grade and by Government grade. It is primarily at the consumer level for the first time the grade designation is left off.

Mr. GILLIGAN. Are you then advocating any Government grading system for packaged products at the consumer level?

Mrs. NELSON. I think the grade designation on packaged products where it is pertinent and useful information.

Mr. GILLIGAN. Where would it not be pertinent?

Mrs. NELSON. On bread products for example.



Mr. GILLIGAN. Do you mean it is not important for the consumer to know the quality of the bread he purchases?

Mrs. NELSON. The Government has already pretty well standardized the basic bread. There is a standard of identity for most breads.

Mr. GILLIGAN. Is there a difference indicated by the Government for instance on a commercial bakery bread as against a specialty bread like Pepperidge Farms bread?

Mrs. NELSON. There is a difference.

Mr. GILLIGAN. There is an indication that the Government rates one quality higher than the other?

Mrs. NELSON. The Food and Drug Administration has a series of identities for bread.

Mr. GILLIGAN. Is this evident to the consumer at the time of purchase?

Mrs. NELSON. Not always, no.

Mr. GILLIGAN. Do you advocate that it should be?

Mrs. NELSON. Yes, I think it would be helpful.

Mr. GILLIGAN. Is there any product on the consumer shelf that would you not have graded according to quality by the Government, or would you have a Government grading system for every consumer product on the shelf?

Mrs. NELSON. I think you would do this on a priority basis. You see, we are getting Government-graded beef now at the consumer level.

Mr. GILLIGAN. We are not concerned about meat in this bill. We are talking about all of these other products. Do you advocate the extension of this process to include every packaged product?

Mrs. NELSON. No.

Mr. GILLIGAN. Which ones would you exclude?

Mrs. NELSON. I think in that subject like in much of this law to be successful you have to start with priority needs, start where it is most needed.

In fruits and vegetables, for example, it would be very simple, relatively, to continue the grade labeling on down to the consumer because the canner knows the grade, he now knows the sizes, and it would be relatively simple to reveal it to the consumer and it would be very useful.

Mr. GILLIGAN. I don't wish to be rude but our time is limited.

One of the most remarkable things to my layman's eye in the food marketing industry has been the enormous success of frozen pre-packaged, pre-prepared foods which obviously cost more than buying the raw product at the farmer's stall, yet the American consumer has gone for it hook, line, and sinker.

In many instances of prepared food, TV dinners and so on, we are not only buying the food, but we are buying the recipe and the skill of the person putting it together. Would you have the Government rate the recipes involved in these things as to superior, inferior, average, and so forth?

Mrs. NELSON. No. The grade designations could reveal to the consumer what is known to everybody else who has handled the product, but it would be most applicable in an unmixed product, so to speak.

Mr. GILLIGAN. Today many of our products and a lot of the consumer dollar is going into that.

Mrs. NELSON. It would be less applicable there.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. I want to thank you, Mrs. Nelson, for your contribution to this discussion. I have a number of questions. Unfortunately, the time does not permit me to ask them, but I was quite interested on page 5 you underline this statement, "Packaging has eroded the consumers' right to name the quantity he chooses to buy."

Am I to conclude that you preferred going back to when we sold everything in bulk and then we would just dip and bring it out?

Mrs. NELSON. No, sir.

Mr. WATSON. I cannot reconcile the positions. Mrs. Peterson complained about the proliferation of packaging and all of that but I would conclude from that statement that you would want even greater proliferation since that was one of her favorite words.

Am I to conclude that?

Mrs. NELSON. No.

Mr. WATSON. Why do you say the consumer has the right to name the quantity he wishes to buy. It seems to me the packaging has changed to getting into quarter ounces in trying to meet the various size families of America. Now you say you want more of it.

Mrs. NELSON. The families I talked to were not persuaded that the change to the quarter ounces was done at their insistence. They did not make that choice. It was not done to meet their request.

Mr. WATSON. I notice in the third paragraph you state that there is such a high concentration in the food industry that four firms achieved the largest sales volume in dry goods category. That would indicate to me and I believe to you that if the FTC or the Food and Drug Administration were to move against one of these companies for any alleged deception in advertising or in labeling, then they could very easily correct this under the existing laws that they have.

Mrs. NELSON. I would like to try to make it abundantly clear that I feel that none of the examples I have set before the committee are deceptive in any actionable way.

Mr. WATSON. They are not deceptive?

Mrs. NELSON. They are not deceptive.

Mr. WATSON. Since you are here testifying on this legislation and you have had vast experience in this category, if you could have found any deceptive practices, you would have presented them to this committee this morning, would you not?

Mrs. NELSON. That, in my mind, was not the most important thing that I wanted to present on behalf of consumers to this committee. If the existing laws are being violated, there are responsible agencies there. We are talking about new laws. I was hoping to demonstrate to the committee how valuable the new law would be in correcting some problems that consumers have that the existing law does not deal with.

Mr. WATSON. I might say this in all kindness, it has been my experience the more laws we have passed the more confused the people become, so if you are holding forth promises to the consumer that this is going to make things less confusing, I think not all promises would justify it.

Further on in your statement, you have painless price increase. Would you mean when the cost of manufacturing these products and the increased labor necessitate a company increasing its price for a

commodity, you would want them to declare that price has been increased 1 cent over last week or last month? Is that what you mean?

Mrs. NELSON. When the potato packager bought those ingredients initially, he bought them in a market that was sufficiently orderly so that he bought them by a standard measure of 1 hundredweight or a bushel or a 50-pound sack or whatever it is in the potato industry. He knew whether the price this week was up or down from last week.

I think the consumer ought to have the same privilege.

Mr. WATSON. You must understand that the cost of living has gone up and I think I would like to see them put on the cans that prices indeed went up 1 percent as they went up the first of the year, higher than they have ever been in the past 8 years.

Mrs. NELSON. Support this bill, and it will do that.

The CHAIRMAN. Mr. Adams?

Mr. ADAMS. Mrs. Nelson, I am worried about the fact that we are going to have a series of witnesses come in to testify from an industry point of view, and you represent the consumer point of view, and we on the committee cannot obviously examine some 2,000 to 7,000 items and therefore we need your help to obtain an understanding of the problem.

I am going to be asking the other witnesses as they come along about these subjects and I want to start and get your conclusion and then if later by some statement you can come in with certain specifics I would like to have them.

First, do you believe that packaging has become a method of price competition between industries rather than reducing or increasing their price so they can maintain a stable price by varying their containers or their quantities as their costs increase.

Is that your conclusion?

Mrs. NELSON. I have seen much evidence where they vary the quantity and maintain the same price.

Mr. ADAMS. Do you think this is a definite factor in the American industry that they are doing this?

Mrs. NELSON. Yes.

Mr. ADAMS. Secondly, I notice all of your examples, and this is why I worry because we can't go through the 2,000 to 7,000, but doesn't much of the proliferation come in the area where you are using a freezing, a dehydrating, or a formula-type process, which is a new type of American processing to the consumer where we freeze things and when you freeze things you take water out and varying amounts of water you take will determine the density and therefore the type of product that you will end up with.

The same thing with dehydrated food, also when creating a formula like your dogfood example, the amount of meat you put in it opposed to something else will vary the weight of it.

Now, with these things occurring, isn't this the main area of proliferation? I expect to hear testimony—and I want your reaction to it—that the quantities in things like the ones I have mentioned—and you can add instant coffee which is dehydrated—and you can add detergents which have a formula of so much cleaning power, and find that these vary because the formulas or dehydration will change. Now the system of creating these products will change and therefore the

producers may be using the same container but will vary the amount in it or keep the same container and volume but the weight will vary because of a change in the type of product.

Is it your conclusion that this is a major cause of the proliferation of weight and volume categories.

Mrs. NELSON. It may be. I would not say that this is not a factor, but I do not think that is the total or even the primary explanation.

Mr. ADAMS. So your conclusion then, and I am sorry to have to ask you for conclusions—I would rather have you take 2,000 items and compare them—but your conclusion is that the proliferation and the problem exists because of the competitive pressures on the producers who are putting this out in the competitive world plus the influence, I think you mentioned, of testing techniques and promotional techniques that caused this to happen.

It makes a great deal of difference in what kind of law you put down because if proliferation is caused by formulas and all of these technical variations, we are going to have some real problems when we start, and it might be that you have to go to a container standard rather than a weight standard, but if it is due to competitive pressures, then I think you can go to labeling and standardization of weights as you mentioned and that will probably be enough and a good result will follow.

Now, which do you think?

Mrs. NELSON. I don't think you can back off of the problem because of the formula. In the instant mashed potato, the Agricultural Research Center in Berkeley developed the dehydrating process with the taxpayers' money. They say it does not matter that there is no variation in formula—a certain amount of dried potato makes a certain amount of mashed potato of a given liquidity or stiffness.

So that is not the explanation according to these people.

Mr. ADAMS. I don't know enough about mashed potatoes but I can see where you can dry it out to 50 or 57 percent, whatever the formula might be.

Mrs. NELSON. I can submit to the committee some information from the Agricultural Research people to this effect, because we went into this very thoroughly with them through a home economist.

Mr. ADAMS. So it is your conclusion that this proliferation and fractional sizes and the lack of comparability is caused by the pressures in the industry and the advertising and promotional techniques rather than formularization dehydration and freezing.

Mrs. NELSON. I think that is an awfully general statement.

Mr. ADAMS. I know it is. I don't know any other way of attacking it. If someone does not come in here and say the variation of sizes of containers is due to the fact that we have a new and improved formula and therefore we can give you as many servings by adding more water to less of what we are giving you, I would be very much surprised, and I want to know your conclusion on the other side.

Mrs. NELSON. I would be very much surprised.

Mr. ADAMS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mrs. Nelson. You have been very patient and you have enlightened the committee greatly.

The committee will have to adjourn until next week. I am sorry. We have a bill on the floor and we cannot sit in the afternoon.

When the bill was announced we had no idea the civil rights would be up but we have it up and we just cannot sit.

If there is anyone who was to be a witness today who would like to have his testimony to go into the record for the edification of the committee he may do so. The committee will stand adjourned until next week. I am awfully sorry. I regret that I have to tell this to you people who are here to give testimony but there is just nothing else we can do. We hope that next week we can go into night sessions in order to accommodate the people who have come some distance to be here.

I will certainly be available at night and we will have some other members of the committee so we can have night sessions in order to get the hearings finished. I do say again any of you who wish to present testimony for the committee for the record, please do so.

The committee stands adjourned until 10 next Tuesday morning.

(The following information was submitted by the California Department of Agriculture in response to a request from Congressman Moss:)

CALIFORNIA DEPARTMENT OF AGRICULTURE,  
Sacramento, Calif., September 8, 1966.

Mr. JOHN BILLETT,  
*Legislative Assistant to Congressman Moss,  
House of Representatives,  
Washington, D.C.*

DEAR JOHN: In response to your telephone call the other day, I am enclosing copies of memos from two of my divisions, listing the standard containers which are regulated by the California Department of Agriculture.

I hope this information will be helpful to you.

Sincerely,

CHAS. PAUL, *Director.*

SACRAMENTO, September 8, 1966.

Memorandum.

To: Chas. Paul, Director.

From: California Department of Agriculture, A. E. Reynolds, chief, Bureau of Dairy Service.

Subject: Dairy products packaging.

You have asked for information relating to standards which apply to packages of fluid milk and milk products. Division 4 of the Agricultural Code contains the following references to package sizes and restrictions:

***Market milk and similar fluid products***

Market Milk and similar products are required to be disposed of to retail trade in standard milk bottles or single service containers. The Bureau of Weights and Measures enforces the "size" provisions in reference to milk bottles and single service containers.

***Ice cream, ice milk and similar frozen products***

These are usually sold in pints, quarts, one-half gallon, gallon, two and one-half gallon and three gallons. Smaller quantities are sold in cups, slices, bars, etc., in fluid ounces. There are no standards for package sizes enforced by the Bureau of Dairy Service.

***Dietetic and diabetic ice cream or ice milk***

Dietetic and diabetic ice cream or ice milk must not be sold in packages larger than one pint.

***Butter***

Butter is usually sold in one-quarter pound, one-half pound, one pound and two pound quantities. The Bureau of Dairy Service enforces no packaging requirements.

*Cheese*

Cheese is sold in random weight packages; the Bureau of Dairy Services enforces no size restrictions except the following: Pasteurized processed cheese spread, pasteurized processed cheese food and cold pack cheese food must be sold in packages of not more than two pounds.

*Evaporated milk*

Evaporated milk is sold in tall, standard, baby and No. 10 cans.

*Evaporated skim milk*

Evaporated skim milk is not permitted to be sold in containers smaller than No. 10 size. This is enforced by the Bureau of Dairy Service.

*Sour cream dressing*

Sour cream dressing must be sold in containers of at least one-half gallon capacity unless flavored with onion, cheese, salmon, anchovy, or pickle. This requirement is enforced by the Bureau of Dairy Service.

*Oleomargarine*

No packaging requirements.

*Dry milk products*

No packaging requirements.

*Acidified cream dressing and sour cream dressing*

Acidified cream dressing and sour cream dressing must be sold in containers of at least one-half gallon capacity unless flavored with fruit, vegetable, sea food, meat, cheese or spice. The Bureau of Dairy Service enforces this requirement.

*Dairy spread*

Dairy spread must be packaged in containers of four fluid or avoirdupois ounces minimum, eight fluid or avoirdupois ounces and one pound or two pounds. The Bureau of Dairy Service enforces these requirements.

*Nonfat frozen dairy dessert*

Nonfat frozen dairy dessert must be sold in consumer-size packages of one-half gallon or less. The Bureau of Dairy Service enforces this requirement.

---

SACRAMENTO, September 7, 1966.

*Memorandum.*

To: Chas. Paul, director.

From: California Department of Agriculture, W. A. Kerlin, chief, Bureau of Weights and measures.

Subject: Regulations concerning retail sale of commodities in standard size containers.

In reply to your inquiry concerning products sold in standard size containers, we wish to advise that Berries, Butter, Oleomargarine, Milk, Potatoes, Flour, Meal and Bread are all governed by provisions of the California Administrative Code (Regulations), or the Business and Professions Code (Law).

The actual regulations are as follows:

2875. *Berries in containers.*—Berry boxes shall not have a false bottom or be so constructed as to facilitate deception or fraud. The standards of net weight and volume for berries in containers shall be:

(a) Strawberries: One pound six ounces (1 lb. 6 oz.) (quart 67.2 cubic inches); twelve (12) ounces (pint 33.6 cubic inches).

(b) All other berries: Twelve (12) ounces (pint 33.6 cubic inches); eight (8) ounces (one-half pint 16.8 cubic inches).

2876. *Butter in containers.*—The standard net weight of butter (when sold, offered or exposed for sale) in a "container" shall be one-quarter pound, one-half pound, one pound, or two pounds net avoirdupois weight.

2877. *Oleomargarine in containers.*—The standard net weight of oleomargarine (when sold, offered or exposed for sale) in a "container" shall be one-quarter pound, one-half pound, or one pound net avoirdupois weight.

The provisions of this section shall become effective January 1, 1964.

2887. *Potatoes in containers.*—

(a) The standard net weight for potatoes in containers shall be: 100 pounds, 50 pounds, 25 pounds, 20 pounds, 10 pounds, 8 pounds, or 5 pounds

net weight. The content declaration shall be conspicuously marked or branded thereon.

Effective January 1, 1965, the 25 pound and the 8 pound standards shall be repealed and are void.

(b) Potatoes when sold in containers of less than five pounds net weight, whether in the possession of the producer, wholesaler, or retailer, must have the net contents indicated on the container thereof.

(c) Overpack shall be made by the packers in an amount sufficient to insure compliance with the above standards.

#### *Milk in bottles*

3127. *Units.*—The capacity of a milk bottle shall be 1 gill,  $\frac{1}{2}$  liquid pint, 10 fluid ounces, one-third quart, 12 fluid ounces, 1 liquid pint, 1 liquid quart,  $\frac{1}{2}$  gallon, or 2 gallons, when the temperature of the bottle is 20 C. (68 F.).

Copies of laws from the Business and Professions Code governing bread loaf (attachment A) and flour and meal containers (attachment B) are enclosed. Copies of article 4, Labeling (attachment C) also accompany.

Should you desire further information, please advise.

#### [Attachment A]

#### CHAPTER 5

#### STANDARD BREAD LOAF, CALIFORNIA BUSINESS & PROFESSIONS CODE

19800. All loaves of bread, sliced or unsliced, made or produced for the purpose of sale, sold, offered or exposed for sale in the State of California shall weigh, until 24 hours after baking, within the limits hereinafter set out, for standard loaves and standard large loaves, as herein defined; provided, however, that larger loaves having weights that are multiples of the mean weight of a standard loaf weight may be made or procured for sale to restaurants, caterers, sandwich makers, hotels, commissaries, institutions, or other public eating places. The total tolerance in excess or deficiency for each of such larger weight loaf shall not exceed two ounces. (Amended by Ch. 1774, Stats. 1953.)

19801. "Standard loaf" shall weigh not less than 15 ounces, and not more than 17 ounces avoirdupois.

19802. "Standard large loaf" shall weigh not less than 22 $\frac{1}{2}$  ounces and not over 25 $\frac{1}{2}$  ounces avoirdupois.

19803. Bread commonly known as "twin loaves" may be made or procured for the purpose of sale, sold, offered or exposed for sale, providing each unit of such twin loaf conforms to the standard weights as herein defined for standard loaf and standard large loaf. (Amended by Ch. 1774, Stats. 1953.)

19804. Whenever any bread is wrapped, in any wrapping, for sale through retail outlets, there shall appear on the body of the wrapping, or on the insert band, in letters clear and legible to the buyer or prospective buyer, in a color contrasting with the background, the words required by this section. Such label shall also comply in all respect with the provisions of Chapter 6 (commencing with Section 12601) of Division 5 of this Code.

The words required on such label shall read "standard loaf, minimum net weight 15 oz." or "standard large loaf, minimum net weight 1 lb. 6 $\frac{1}{2}$  oz." as the case may be, and the lettering thereof shall be of minimum height of one-quarter inch.

This act shall become operative January 1, 1964. (Amended by Ch. 516, Stats. 1963.)

#### EXCEPTIONS:

19805. The provisions of this chapter shall not apply to crackers, pretzels, biscuits, buns, scones, rolls, or loaves of fancy bread weighing less than one-fourth of a pound avoirdupois or to what is commonly known as "stale bread," sold as such, provided the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is stale bread.

19806. Any person, firm or corporation who shall make or procure for the purpose of sale, sell, offer or expose for sale within the State of California any bread in loaves otherwise than herein provided for or in conflict with the standard weights of bread when baked as herein fixed, shall be guilty of a misdemeanor. All inspection of the weight of bread shall be made on the premises of the maker or manufacturer or on the premises of the retail store from

which the bread is sold, or offered for sale or exposed for sale by averaging the weight of not less than ten loaves of bread of any one unit of a specific brand name and such average weight per loaf shall not be less than the minimum or more than the maximum weight herein fixed for the respective loaf for such unit; provided, however, that in the event 10 loaves of bread of any one unit of a specific brand name shall not be available at the time of inspection, the average of weight shall be made upon the basis of such loaves of bread of any one unit of the brand name as may be available. (Amended by Ch. 1499, Stats. 1949.)

19807. The enforcement of the provisions of this chapter shall be under the supervision of the Chief of the State Bureau of Weights and Measures.

19808. Any person who violates any provisions of this chapter shall be guilty of a misdemeanor.

19809. Chapter 704, Statutes 1921, together with all acts amendatory thereof and supplementary thereto are repealed.

19810. Notwithstanding any other provision of this chapter, any bakery which maintains and operates premises upon which it offers bread for sale at retail may bake and sell upon such premises loaves of bread which weigh eight ounces, or less, avoirdupois. (Added by Ch. 1153, Stats. 1966.)

---

[Attachment B]

CHAPTER 10. FLOUR AND MEAL CONTAINERS

(Heading added by ch. 159, Stats. 1945)

STANDARDS OF WEIGHT

13000. It shall be unlawful for any person, partnership, corporation, company, cooperative society, or organization to pack for sale, sell, offer or expose for sale any of the following commodities except in containers of net avoirdupois weights of five (5), ten (10), twenty-five (25), fifty (50), and one hundred (100) pounds, and multiples of one hundred (100) pounds: Wheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits.

EXCEPTIONS

The provisions of this chapter shall not apply to (a) the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, or (b) the sale of flours and meals to commercial bakers or blenders in containers of more than one hundred (100) pounds, or for export, or (c) flours, meals, hominy, and hominy grits packed in containers the net contents of which are less than four (4) pounds, or (d) the exchange of wheat for flour by mills grinding for toll. (Added by Ch. 159, Stats. 1945.)

PENALTY

13001. The violation of this chapter is a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each offense. (Added by Ch. 159, Stats. 1945.)

---

[Attachment C]

ARTICLE 4. NET QUANTITY DECLARATIONS ON PACKAGED COMMODITIES

2018. *Application.*—These regulations shall apply to all commodities in package form, except as exempted by provisions of Divisions 5 and 8 of the Business and Professions Code, and the declaration, or declarations, of quantity on a package or container shall be determined on the basis of the standards set forth herein.

DEFINITIONS

2019. *Label.*—The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article. If the area of a label is



used to determine the type size for a quantity statement, then the net quantity statement shall be on the label, subject to the provisions of Section 2920.3.

**2919.1. Tag.**—A tag is a card or similar article of paper or other material which is affixed to a container by a wire, string or similar means. It may be used on a sack, bag, or container which has a brand or other label, but if the area of a tag is used to determine the type size for a quantity statement, then the net quantity statement shall be on the tag, subject to the provisions of Section 2920.3.

**2919.2. The principal display panel.**—The principal display panel or panels shall be construed to mean that panel or those panels of a label that is, or are, so designed as to be most likely to be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. If the area of the principal display panel is used to determine the type size for a quantity statement then the net quantity statement shall be on the label, subject to the provisions of Section 2920.3.

**2919.3. Area of principal display panel or panels.**—The principal display panel area shall be:

- (a) The product of the height times the width for a rectangular label.
- (b) Forty percent of the product of the height times the circumference for a cylindrical or nearly cylindrical container with a label covering the entire cylindrical surface.
- (c) The total printed area or one-third the total flat area of one side whichever is greater for a flat container such as an envelope, sack, or bag.
- (d) The total actual area for a container with a distinctively identifiable label area.

**2919.4. Effective date.**—These regulations shall be effective with respect to all labels, tags or principal display panels after January 1, 1967, and to other labels, tags or principal display panels:

- (a) That are redesigned after January 1, 1965.
- (b) That are prepared from plates, dies, cylinders, and the like, made after January 1, 1965.

The provisions of this section shall not apply to content statements formed into the surface of containers in compliance with Section 2920.5.

#### QUANTITY DECLARATION

**2920. Presentation.**—The declaration, or declarations, of quantity of the contents of a package shall be presented on the principal display panel in such a manner as to be generally parallel to the base on which the package rests as it is designed to be displayed. Quantity declarations intended to be read through a liquid commodity shall not be permitted.

**2920.1. Style of type of lettering.**—The declaration, or declarations, of quantity shall be in such a style of type or lettering as to be boldly presented, clearly and conspicuously, with respect to other type or lettering or graphic material on the panel or panels. (As for example, bold faced or block style type).

**2920.2. Color contrast.**—The declaration, or declarations, of quantity shall be in a color that contrasts definitely with its background: Provided, that this section shall not apply to (1) permanently labeled reusable glass containers for which standards have been established for specific products and, (2) blown or molded containers which comply with the provisions of Section 2920.5.

**2920.3. Minimum height of numbers and letters.**—The height of any letter or number in the required quantity statement shall be not less than those shown in Table 1, with respect to the square inch area set forth. Provided, that the height of each number of a common fraction shall not be less than one-half the dimension shown.

TABLE 1.—Minimum height of numbers and letters

	Minimum height of numbers and letters (inch)
Square-inch area of principal display panel:	
Greater than 0 square inch and not greater than 25 square inches.....	$\frac{1}{16}$
Greater than 25 square inches and not greater than 120 square inches...	$\frac{1}{8}$
Greater than 120 square inches and not greater than 400 square inches...	$\frac{1}{4}$
Greater than 400 square inches.....	$\frac{1}{2}$

2920.4. *Free area.*—The declaration, or declarations, of quantity shall be in an area sufficiently free from other printing, lettering, or marking, to make said declaration, or declarations, stand out definitely with respect to the surrounding printing, lettering, or marking (such as an area free of printing or marking in all directions from the statement for a dimension not less than twice the minimum required height for the letters and numerals of the statement).

2920.5. *Information formed into surface.*—Quantity statements may be formed into the surface of a container for liquids by molding, blowing, or similar means, provided that in such case the height of any letter or numeral shall not be less than three-sixteenths of an inch for containers of one pint or less capacity, and not less than one-fourth inch for containers of greater than one pint capacity; and provided further, that if the trademark or brand name is also formed into the surface of the container, then the required declaration or declarations of quantity shall appear in close proximity to the trade or brand name. If a label is attached, the quantity statement shall appear on the label.

When the trademark or brand name is applied to the surface of a container in a contrasting color the required statement of quantity shall also be applied to the surface in a contrasting color, and shall be in height not less than one-eighth inch for containers of one pint or less capacity and not less than three-sixteenths of an inch for containers of greater than one pint capacity.

Permanently marked or branded, reusable containers in use prior to January 1, 1966, may remain in service, but all such containers manufactured after January 1, 1966, shall conform to this section, and shall be permanently marked or branded with the final two digits of the year of production. All new molds, dies, etc., made after January 1, 1965, shall produce containers in full compliance with these regulations.

#### GENERAL

2921. *Other information to be shown on packages.*—Except as otherwise provided in this article, any commodity in package form kept for sale, offered for sale, or exposed for sale, shall visibly bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container, and (2) the name and place of business of the manufacturer, packer, or distributor, unless the commodity is kept or offered for sale on the premises where packed.

2921.1. *Covering.*—A covering, such as a display carton or band, shall not obscure a statement of net content, unless such covering or carton also includes a proper content statement for the container.

2921.2 *Supplemental statements.*—A secondary statement of contents for consumer information, other than the required statement, is not prohibited, but shall not be placed or designed so as to obscure the required statement. A supplemental statement shall be accurate.

2921.3 *Units with two or more meanings.*—Units with two or more meanings shall be identified as to the particular meaning employed in a net content statement. Distinction shall be made between "avoirdupois" and "fluid" ounces. However, such distinction may be omitted when, by association of terms (as "1 pound 4 ounces," "weight 6 ounces," or "1 pint 8 ounces"), the meaning is obvious. Pints and quarts shall be considered to be liquid measure if not identified. Dry pints and quarts shall be identified by the word "dry" in the statement of quantity. Normally accepted abbreviations may be used unless prohibited by provisions of the Business and Professions Code applicable to the labeling of bread.

2921.4. *Accurate consumer information.*—Accurate consumer information shall be provided by any net quantity statement. Any statement of count shall be accompanied by a statement of weight or measure if necessary to provide accurate information.

2921.5. *Common fractions.*—Common fractions shall be reduced to their lowest terms.

2921.6. *Approval.*—Quantity statements for which the display panel area determination is not applicable, as shown in Section 2919.3 may be submitted to the Department of Agriculture, Bureau of Weights and Measures, for approval. (Revised 6/22/66.)

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 10 a.m., Tuesday, August 2, 1966.)

## FAIR PACKAGING AND LABELING

---

TUESDAY, AUGUST 2, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We are continuing our hearings on fair packaging and labeling bills. Our first witness this morning will be one of our colleagues from New York, the Honorable Seymour Halpern.

We are happy to have you with us, Mr. Halpern.

I want to say that Mr. Halpern always comes before the committee when he has anything of interest to his people and to his State on which to testify.

We are glad to have you.

I yield to my colleague from North Carolina.

Mr. KORNEGAY. Mr. Chairman, I hesitate to interrupt at this point, but I do want to bring up a matter before we commence to hear the witnesses today, which I think is of vital interest to this committee, the Congress, and the Nation. That is the matter of the airline strike.

The Senate has held hearings and reported out bills, as I understand it. As the chairman knows, I have been interested in this matter for some time. I have requested hearings on two occasions.

I just wanted to bring that up at this time and say that while these are important bills that we are considering, I think that the airline strike is of far greater importance. The damage being done by the airline strike is far greater on the consuming public than this matter of packaging.

I would like to again urge the chairman to call hearings on my bill and other bills of similar import in connection with the airline strike at the earliest possible moment, and to ask the chairman when and if he believes those hearings will come to pass.

The CHAIRMAN. I would like to say to the gentleman from North Carolina that it is the chairman's intention, in working with the leadership of the House, to take up the airline strike legislation just as soon as something tangible comes out of the Senate. We will immediately set other affairs aside, because I, too, think as you do, that it is one of the most important things today facing the Nation and Congress.

I believe it is wise, and the leadership does, to wait and see what comes from the Senate.

Mr. KORNEGAY. Mr. Chairman, it is far more important to the country than this bill we are now considering. I would hope that we would suspend action on this truth in packaging bill until the committee has taken action in the strike situation.

The CHAIRMAN. I agree with the gentleman, but, as I say, it is the wisdom of the leadership of the House that there will be no action taken until we see what comes from the Senate. It would, perhaps, cause duplication and we might get into difficulties here if we take up one proposition and the Senate comes out with another. We might not get it settled for weeks.

I think it is best, and the leadership does, too, to take up what comes from the Senate, which we hope will be finished today. It will not prolong very long what we have to do here.

Mr. KORNEGAY. If I understand the situation, then, as soon as something comes from the Senate we will suspend with the business now before the committee and proceed to consider legislation that will end this airline strike, which is so dangerous to the economy of the Nation.

The CHAIRMAN. I might say we will not necessarily suspend, because we might go into it at nighttime to try to get it out. We will expedite it as much as we can.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. YOUNGER. Mr. Chairman, what assurances do you have that the matter is coming to our committee? Yesterday, the House Education and Labor Committee had hearing on this subject. It is coming out of the Labor Committee of the Senate and not the Commerce Committee. This is a legislative matter that has always been before this committee.

What assurance have you received that it is coming to our committee?

The CHAIRMAN. I have such assurance from the leadership. It will come to our committee.

After all, it is an amendment to the Railway Labor Act, which belongs to this committee.

Mr. YOUNGER. I think we ought to have some action on it.

The CHAIRMAN. I am in agreement with the gentleman.

Mr. Halpern, you may proceed.

**STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED  
BY STEVEN NEY, STAFF ASSISTANT**

Mr. HALPERN. Mr. Chairman and members of this distinguished committee, I do appreciate this opportunity to testify before this distinguished committee today in order to present my views on the fair packaging and labeling legislation, which I have long sponsored and supported.

At the outset, Mr. Chairman, with your permission, I would like Mr. Steven Ney, of my staff, to sit at the witness table, since he has some exhibits that I think would be pertinent to my testimony.

I would also like to express my deep appreciation to the distinguished gentlewoman from the great State of Washington for yielding to me this morning. I assure her, as I do the committee, that I will be extremely brief.

I do have an executive session of another committee and I must rush over there.

I do appreciate her courtesy in yielding to me.

I appeared last May before the Senate Commerce Committee and stated at that time: "The need for this legislation has been with us for too long, and now, surely is the time for action." Today, more than 1 year later, and appearing on the House side, I say with an even greater sense of urgency, Mr. Chairman, that now is the time for your committee to act.

Until it looked like Congress was going to move in this area, the practices had gone from the subtle to the ridiculous. The situation is still serious and the only way to stop these abuses is to adopt protective legislation.

For too long the consumer has been shortchanged and deceived by excessive advertising practices and misleading distortions of truth. It is high time to correct them.

Let me show you what I mean. Here I have a frozen cherry pie whose label shows a pie just chock full of cherries. The real pie inside, however, contains only a fraction of the number illustrated. Look on the cover, Mr. Chairman, one-quarter of the pie is exhibited.

I count 40 cherries in this picture representing one-quarter of the pie. We open the pie and discover that there are only, I believe, 72 cherries in the entire pie. One could expect if there are 40 illustrated that there would be 160 in the full pie.

Here are the cherries that were in that entire pie. I have them here in this dish.

Just to show that it isn't just an exception, Mr. Chairman, I brought along a couple of these pies unopened, and frankly had one baked in case the committee would like to share in it and see for themselves the fact that the vast percentage of this pie is mere filling and not the cherries that are illustrated on the cover.

I have knives and forks and I have a member of the staff who would be very happy to serve this to members so that they can see for themselves.

We have here another deceptively packaged cherry pie. We wanted to know if it was just that particular brand. We did find another brand. In this instance, they just show a side view, of one slice. We count there 14 full cherries. We would expect, based on the fact that this is just a little side view and represents one-sixth of the pie inside, to find hundreds of cherries inside. But by actual count, believe it or not, there were only 44 cherries in the entire pie serving 6 people. I don't know of any more blatant example from the pictorial aspect than these two instances I cite here.

As another example, I have covers of some frozen dinner packages. In one instance the beef shown on the cover—and this is even smaller than the average plate, so we would take for granted this would be the serving inside this so-called dinner, and yet the beef shown on the cover is actually twice the size, Mr. Chairman, of the beef inside.

We have next a frozen turkey dinner. Here is the turkey illustration and yet inside was only 25 percent of the contents shown on the cover. The rest was sloppy, wet dressing, Mr. Chairman.

These couldn't be more blatant examples.

As a final example, I have two boxes of well-known breakfast foods put out by the same manufacturer within a short period. One contains 18 ounces and the other 14½ ounces. Yet both are packaged in boxes of the identical size. This is extremely misleading.

But I must mention that it is not enough for a package to be non-deceptive. It must also accurately and completely inform the housewife of what she is buying. The American housewife deserves a fair deal. Rather than befuddling and confusing her, labels must help her to make informed shopping decisions.

The fair packaging and labeling bill accomplishes that objective. It will give the Food and Drug Administration and the Federal Trade Commission authority to require that all labels be nondeceptive and for the first time ever, that labels "facilitate price comparisons" for the consumer. This is a great step forward.

The bill is significant because also for the first time a mandatory section of the bill requires the promulgation of specific regulations for packaging and labeling; not mere guidelines which are often ignored by industry. This, too, is a great step forward. It is true that there are already some existing standards in this area, but they are rather vague and nebulous injunctions against deceptive and misleading labeling.

When this bill is hopefully adopted and regulations are established, all manufacturers of a particular commodity will have to make sure that their labels satisfy definite minimum standards. There will be no room for legal doubt or uncertainty on any side. The mandate will be clear to provide specific and detailed regulations.

As you well know, the bill before us differs in some respects from the original bill of Senator Hart, of which I am proud to be the first House sponsor. Some of the changes made are eminently sensible and have garnered considerable support, including mine. I refer to the new mandatory requirement that the net contents statement be printed parallel to the base of the package in a uniform location, and further, that the label must show the name and place of business of the manufacturer, packer, or distributor.

I am in agreement with the specific prohibition of mixed units, and the transfer of the "cents-off" section to the discretionary part of the bill. I also commend the chairman for reinserting in his bill a provision deleted by the Senate—the so-called slack-fill section.

Some changes, unfortunately, have weakened the bill. The time limit set forth in section 5 is unduly long. Why does any industry need 12 to 18 months for developing a weight or size standard on one particular commodity? Thousands of deceptive and confusing labels brought out in years of hearings demonstrate that industry in many cases has not voluntarily regulated itself. I would prefer the far stronger provision in the Hart bill which authorizes the relevant agency and not the industry to promulgate regulations after full hearings.

An important section was deleted from the original bill. It would have prohibited deceptive pictorial matter such as the cherry pie labels which I showed you. Admittedly, it will be difficult in some cases to devise standards pertaining to illustrative material. However, for some products, this may be feasible.

In order to cover those cases, I would favor inserting such a section originally in the mandatory section of the Hart bill, but deleted in the Senate version, into the discretionary section of the chairman's bill. In this way, joint Government-industry cooperation under the voluntary products procedures of the Department of Commerce, could formulate standards in this sensitive area. By placing pictorial matter in the discretionary part, we would have a workable provision.

I urge that you consider adopting these changes to what I consider to be a very fine bill in both concept and construction.

I disagree that this legislation will interfere with our system of free competitive enterprise, as some of its opponents contend. On the contrary, this bill preserves and enhances free and fair competition. It will not stifle the growth of industries or preclude product diversification. Ample room is left for competition in the marketing of products. The only restriction is that packaging must be honest and fair. I am convinced that this will not be inordinately burdensome on the creativity and imagination of American business.

I am privileged to have worked for years at the forefront of this type of legislation to give the consumer a square deal and urge that your committee report this bill favorably.

Once again, I want to thank you, Mr. Chairman. I have kept to my word of being brief, and I want to thank you and the committee for giving me this privilege of appearing before you this morning. I certainly hope that we will get reasonable legislation from your committee along the lines I have outlined in my brief testimony.

Thank you again, Mr. Chairman.

The CHAIRMAN. We appreciate your coming before the committee to give us your views. You are always out in front to present what you feel is in the best interests of the country.

Are there any questions?

We have one of our colleagues from New York.

Mr. MURPHY. I would just like to point out, Mr. Chairman, that the gentleman from New York represents an area in New York that probably is subjected to some of the most competitive type of advertising in the consumer field. The gentleman, prior to his long service in the House, served in the State legislature of New York. During that period of service he was consistently thoughtful and attentive to some of the problems of advertising in a mass metropolitan area where I think the thrust of this legislation will probably have its biggest impact.

There is one thing I would like to ask about the manufacturer of those cereals.

Was there a difference in price between the two cereals based on the 16- and 14-ounce packages?

Mr. HALPERN. Ironically, and this is very interesting, Mr. Chairman, and I should have made this point, the cereal package with the smaller contents, which was cut off where the contents ended, cost 2 cents more than the other box. Both were manufactured and offered on the market by the same manufacturer.

Mr. MURPHY. It probably points out that the manufacturer is trying to standardize on a carton size, and, therefore, affecting a manufacturer savings, at least in the administrative end of the business.

One of the criticisms of the legislation is the fact that it is going to standardize packaging. But the manufacturer here has already gone to standardization, even though he does vary the price, probably because of content and not because of the package.

Mr. HALPERN. That is a very good point.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Under the present law, the Federal Trade Commission does have power to prevent deceptive advertising. Would you say, in the case of the sizes there, that was deceptive advertising?

Mr. HALPERN. I think it would be a case that the agency would have to prove, and, at best, without having the rules and regulations offered by this legislation it might be difficult to prove.

Mr. YOUNGER. The Chairman of the Commission stated before the committee that they have full power now to act in any of these cases. Did you call this to the attention of the Federal Trade Commission?

Mr. HALPERN. These specific instances? I merely went out and with the help of my staff within the last few days obtained these as flagrant examples, as I said in my testimony. These come from local supermarkets. It wouldn't have happened if we had legislation such as I propose. There would be standards and this would not be allowed to exist.

Mr. YOUNGER. Why do you say that is true when the Chairman of the Federal Trade Commission has told us that he has ample authority under existing law to stop any of that? They are the ones that are going to enforce this new law.

Mr. HALPERN. But he has to work on a case-by-case basis. It takes too long. In the meantime it is produced. I don't know how long these products have been on the market, but they could have been on for years. Evidently they still are. Since the packages were purchased just yesterday.

Mr. YOUNGER. The Federal Trade Commission has already decided they do not have to proceed under a case-by-case basis, but they can proceed against the whole industry. They did that in the case of the cigarettes. The Chairman of the Commission admitted that before the committee.

I am interested in this: If there is any additional power that should be given to the Federal Trade Commission in the sense that they can proceed against the industry as a whole, or a case-by-case basis, in the case of any deception, wouldn't that be a proper amendment to the Federal Trade Commission Act?

Mr. HALPERN. If you recall correctly, I believe it was Mr. Dixon who, in his testimony, said he would like to have mandatory power, so his Commission could be much more effective.

I believe this is the way you should and could do it, to protect the public in advance.

Mr. YOUNGER. That is not an amendment to the Federal Trade Act. This is creating a new bill entirely, a new law, creating more confusion.

Mr. HALPERN. I think we should have both. I think we should have legislation which I believe is fair and reasonable in order to prevent



any of these abuses from happening, and I think the agency should have the power it requests, through the amendment you propose, sir.

Mr. YOUNGER. I noticed that you put the word "reasonable" in here, which is not in your printed thought.

Mr. HALPERN. I commend your attentiveness.

Mr. YOUNGER. What worries me, how to get the same enforcing agency of the Government to act in the case of these deceptive and frustrating points of view. Both the Federal Trade Commission and the representative from the Food and Drug Administration said that they would be satisfied to have these as amendments to their act, giving them this additional power which they want. You are an attorney and I thought maybe you would have some thoughts on this question.

Mr. HALPERN. We would go further than just the deception to which you refer. We want to help the consumer make price per unit comparisons. I believe this is one of the main thrusts of the legislation.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Halpern, I have enjoyed your testimony very much. If I had not had breakfast this morning I would have eaten the cherry pie.

I was interested in your examples on the meat TV dinner and the turkey TV dinner. I am not sure that that actually would be covered by this law because there is an exclusion in the Senate bill and this bill of any meat or meat product and poultry product.

What would be your opinion? Do you think a meat product would be covered with this exclusion?

Mr. HALPERN. I would like to have it covered, sir. Right now I believe it would be covered by the Agriculture Department. It is not in the chairman's bill or in the bill that came from the Senate. I would like to add that. It is in my bill and it was, I believe, in the original Senate bill.

Mr. ROGERS of Florida. As I understand it, the administration's position has been that the Department of Agriculture has sufficient authority. Therefore they have not asked that this be covered. Yet these examples exists.

I wanted your opinion on them.

Mr. HALPERN. That is why I would put it in the discretionary part of this bill, where we have the voluntary products standards provisions. I would include the pictorial matter so that the industry can clear up its own standards.

Mr. ROGERS of Florida. Thank you.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I would like to make reference to the idea that the Federal Trade Commission would, by rulemaking, have the broad authority that our good colleague suggests.

I recall in the antitrust legislation with cease and desist powers that the Federal Trade wanted at that time, under the provisions granted in this particular legislation a person would be adjudged guilty until you prove you are innocent, rather than innocent until they prove you are guilty.

I wonder if, by rulemaking authority, which this bill, I understand, will provide, in the way of standardization of labeling and packaging,

it seems to me there is a possibility that the entire industry, whether it be canners or some other cooking materials, would be in jeopardy of any attractive packaging they might have to catch the public eye and if they would be found in violation of this so-called standard or rule they would be guilty if so charged until they proved their innocence. Am I right or wrong?

Mr. HALPERN. I think you are wrong. By no stretch of the imagination is it in the interest of this legislation, nor do I interpret it as such, to do anything else but eliminate the unfair and deceptive practices that now exist.

I feel there is plenty of room for good illustrations, plenty of room for intelligent, imaginative, creative packaging to attract the consumer.

We have no intent whatsoever to change that. But we do want it to be fair and we do want it to be honest. That is all we ask.

Mr. NELSEN. I am advised, however, that the authorities would be in a position of saying that this is in violation of what we consider to be selling or merchandising and, therefore, you are guilty.

I have checked this with some attorneys.

Mr. HALPERN. They would still have to go to court.

Mr. NELSEN. I am glad the discussion has brought it to our attention. I believe you need to carefully check this very point. I am fearful of the fact, and I am not a lawyer, because I have been advised by those who are lawyers, that this might very well lead into an area that would be very, very difficult for any person who is merchandising a product.

I thank the gentleman for his time.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Are there any further questions of this witness?

Mr. KEITH. My compliments to the gentleman.

Mr. PICKLE. Mr. Chairman, I will forego questioning, but I wonder if the gentleman would pass to the committee the cherry pie boxes and the cereal boxes? I would like to see them.

The CHAIRMAN. Mr. Cunningham.

Mr. HALPERN. I might say these are not manufactured in Omaha.

Mr. CUNNINGHAM. I am on your side so far as abuses are concerned.

Sir, could you explain what you were talking about in these two packages?

Mr. HALPERN. Yes.

Both packages come from a single manufacturer of the same breakfast cereal. One box evidently was a previous one, but is still on the market, although there has just been a recent change.

The boxes are identical in size as you can see. The contents of one is 14½ ounces and the other 18 ounces. On the one which is slight, the contents came up to the point of that slit. The rest was merely cellophane and air. Yet the box is the same size.

I might add that the box with the smaller content cost 2 cents more than the other.

Mr. CUNNINGHAM. Thank you.

The CHAIRMAN. Are there any further questions?

If not, thank you very much.

Mr. HALPERN. Thank you, Mr. Chairman.

The CHAIRMAN. We will now hear from our colleague, the Honorable Catherine May, a Member of Congress from the State of Washington.

**STATEMENT OF HON. CATHERINE MAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON**

The CHAIRMAN. We want to say that we appreciate your taking time from your busy schedule to give your testimony to the committee. As I have said many times, we always find you very helpful.

Mr. SPRINGER. Mr. Chairman, may I say that in this field I feel that Mrs. May from Washington is one of the authorities. She has made a study extending over a long period of time. She has devoted herself seriously to this question. She has appeared on national radio and TV programs, appearing last week, I believe, on the "Today" program, in which she presented some of the points she will make today.

I think we are listening to one of the authorities in this Congress on this problem.

Mrs. MAY. I thank my colleague and the chairman.

The CHAIRMAN. You may proceed.

Mrs. MAY. Mr. Chairman and members of the House Interstate and Foreign Commerce Committee, I certainly do welcome this opportunity to testify on S. 985, the proposed Federal packaging and labeling bill.

I appear before you today to oppose this legislation because, in my opinion, it is legally superfluous, technically inexact, and an inflationary time bomb for the American food and grocery consumer.

However, I would like to say, in due deference to the kind remarks of my colleague from Illinois, before I develop these points, my opinion that I don't think women own any monopoly in the field of consumer expertise. I say this because I think some of the proponents of S. 985 have obviously tried to exploit what well might be described as the average male Congressman's innate terror of organized womanhood in the legislative field.

As one who is both a housewife and a House Member, let me assure the members of this committee that no single sex or group can claim to speak with more authority than any other in behalf of consumer interests.

Men and women, young and old, Democrat and Republican alike—we are all consumers.

Nor can any individual truly say that he or she has a mandate, or should be given a mandate, to speak for the American consumer.

For under our system, the consumer speaks for himself, and herself, through exercise of freedom of choice in the marketplace.

In fact, were I to sum up my opposition to S. 985 in one sentence, it would be that I am against this bill because it seeks to replace consumer freedom of choice with Government regulation of choice.

And for what reason? Let me quote from testimony given this committee last week by Mrs. Esther Peterson, special assistant to the President for consumer affairs.

"Mr. Chairman," said Mrs. Peterson—

there is a clear-cut need for this legislation. It grows out of the abundance and complexity of the American economy with its thousands of packaged products. It grows out of the efficiency of our large-scale, self-service system of retailing \* \* \*.

If I then understand Mrs. Peterson's argument correctly, the compelling reason Congress must enact additional legislation to regulate our food and grocery system is that this system has proven to be successful.

Mrs. Peterson spoke of abundance and efficiency. Indeed, the American consumer enjoys the most abundant, efficient, modern food and grocery system in the world.

But let us also note the fact that, to date, it has been the least Government-regulated modern food and grocery system in the world.

Is there a relationship between our system's being both successful and free? I cannot speak for Mrs. Peterson or other proponents, but in my opinion our market abundance and efficiency is a product of this freedom of our marketplace.

Is this harmful to the interests of the consumer?

Yes, replies Mrs. Peterson, to the extent that it has led to the "complexity" of the modern supermarket. And this "complexity" in turn has led to consumer confusion.

Perhaps it came as a surprise to some members of this committee—it certainly did to me when I studied the transcript of last week's hearings—that the real thrust is therefore directed at protecting the American consumer not from deception, but from this purported confusion in the marketplace.

Government's responsibility and role in curbing deception in the marketplace is well established. But it is quite another matter to ask for a legislative mandate aimed at ending confusion, as Mrs. Peterson, Mr. Dixon and other S. 985 proponents argued last week.

I am not a lawyer, but as a legislator the distinction seems clear to me. Deception is an objective act, capable of certain legal definition and restriction. But confusion is subjective and wholly incapable of being measured by any certain legal criterion.

Thus, Congress can—and has—set standards and criteria for what constitutes deceptive practices in the marketplace. But who is to say what is confusing and what is plain to understand?

More to the point, who in Washington, D.C.—which, I am told, is sometimes referred to by the less reverent as "the District of Confusion"—who in Government should be empowered to save the American consumer from confusion in the supermarket?

Perhaps it will be Mrs. Peterson. Perhaps, Mr. Dixon. I have great personal respect for both, but if the testimony presented this committee last week is an example of deconfusion, Congress might well spare the American consumer that bargain.

No, the answer to possible confusion in the marketplace is not to substitute long-distance judgment of a Washington, D.C., authority for that of the consumer in the marketplace.

We can protect consumers from deception—but Congress need not enact the superfluous provisions of S. 985 to do this. All that is needed

here is the strict administration and rigid enforcement of existing laws by appropriate agencies.

But in the gray area of trying to do something about confusion resulting from the "complexities" of the modern marketplace, no law, laws or mandates can in themselves protect the consumer.

What Government can do in this area, however, is to help consumers protect themselves. And this can best be accomplished by an expanded and modernized program of consumer education. I have said this many times before and I will say it again.

If anywhere near half the effort which Government officials and other supporters of S. 985 are expending on behalf of more legislation were spent, instead, on improving Government's education efforts to make smart shoppers out of today's buyers, they could truly be doing a job to benefit the Nation's consumers.

For in education—not legislation—lies the answer to eliminating consumer confusion in the marketplace.

We live at a time when one-half our population is under the age of 25. And when Luci Johnson is married this Saturday, she will join some 40 percent of Americans brides who are now under the age of 20.

Yet, the unfortunate fact is that most of the programs we now have in our schools, extension service, and the many places we have them, to prepare young women like Luci for their responsibilities as shoppers are not geared to what Mrs. Peterson calls the "complexities" of the modern marketplace.

Luci and millions of other young women have not been prepared for the thaw-and-serve age—the market-oriented kitchen—of the 1960's. Instead, what home economics training most young girls today receive is geared to the cup-and-teaspoon era of their mothers and fathers.

In shopper education lies the real challenge and opportunity for those in the executive branch charged with the responsibility of looking out for the interests of the American consumer. Thus, the father of this Saturday's bride might better direct the efforts of his consumer adviser toward educational rather than legislative enterprises in the consumer's behalf.

I have said that S. 985 is legally superfluous and technically inexact. In addition, it is an inflationary time bomb which would inevitably result in higher food and grocery prices throughout the country.

It was surprising that proponents of S. 985 said that the aim of this bill is to protect the American consumer not from deception but from confusion.

But it was more than surprising—it was in fact alarming—that none of last week's Government witnesses could offer the committee a single study or analysis made to determine the effect of this legislation, if it should be enacted, on food costs. Surely, those officials, whose job it is to look out for the interest of the consumer, must know that the greatest threat today to that interest is the escalating cost of food and groceries.

Nevertheless, S. 985 apparently has been submitted to the Congress without any consideration being given its possible impact on food and

grocery manufacturing costs—or on the high price which our consumers would have to pay for the nebulous “protection” this bill might afford them.

As a member of the House Agriculture Committee concerned with anything affecting food prices, from the farm to the table, I have looked into the matter of the cost impact of S. 985. In the absence of any evidence to the contrary being offered by the bill’s proponents, I submit what food and grocery manufacturers themselves have to say on this subject.

In the testimony given to the Senate Commerce Committee one manufacturer estimated that the bill would require “at least \$10 million for new equipment and equipment modifications” in his operations, in addition to “\$3 million in recurring annual costs because of manufacturing inefficiencies and additional packaging material costs.”

A food manufacturer told the Senate committee that the bill would result in additional manufacturing costs “in excess of \$5 million” for his operations.

A cereal manufacturer estimated increased expenditures of over \$4¼ million for capital equipment and additional operating costs of over \$2 million annually to comply with the bill’s provisions.

Another food manufacturer estimated “as much as 25 percent increased costs” as an outgrowth of S. 985.

Nor should the bill’s effect on the small manufacturer be overlooked. I quote from testimony of one of the industry witnesses before the Senate committee:

“A small manufacturer will find this additional machinery investment particularly burdensome, as he generally has a much rougher time obtaining the necessary financing.”

Let me again point out that last week’s Government witnesses, by their own admission, have developed no studies or analyses to reply to or offset these estimates furnished by industry experts.

How would these additional manufacturing costs be incurred—these costs which would result in increased food and machinery prices for the consumer?

Let me give but one example, that of the bill’s possible effect on packaging weights.

Much has been made by the bill’s proponents of the “confusion” caused by the use of fractional weights in packages. But what is overlooked is that were it not for the use of fractional weights, food and grocery manufacturing plants would be forced to “proliferate” their packaging equipment at a tremendous cost to the consumer.

Modern packaging efficiency is made possible because standard machinery can be used to manufacture similar sized containers for a multitude of products. But as we know, these products vary in density and weights.

Thus, the same-sized package which comes off the assembly line containing an even 1 pound of lead—and I would like you to look at this package, this is 1 pound of lead, fishing weights which I have weighed—would contain only a fractional one-fourth ounce of feathers. One pound of lead in the same size package as a quarter ounce of feathers.

But what if we were to seek an even-weighted 1-pound package of feathers?

Here it is, gentlemen.

With new and expensive machinery required to provide an even 1 pound—don't fool yourself, it will be the consumer who will pay the cost of this equipment "proliferation."

This, of course, is an extreme example of the reason for fractional weights. It does, however, illustrate the overall problem of relative density affecting weight measurements in foods and grocery items such as cake mix, cereals, and soap.

This illustration is only by way of explaining a phase of modern food and grocery manufacturing which too few of our consumers understand. Even if fractional weights are as confusing as S. 985 proponents charge—and I personally do not believe American consumers are nearly as confused about such matters as some of their would-be "protectors" seem to be—the question remains as to whether we are prepared to pay the higher food costs which changing the system would require.

Let me conclude then, Mr. Chairman and members of the committee, by repeating that S. 985 is legally superfluous, technically inexact, and an inflationary time bomb for the American food and grocery consumer.

The Federal Government is already involved in nearly 300 programs to help the consumer. Some 118 of these activities are aimed at directly looking after and advancing consumer interests. The costs of these programs total over \$100 million a year and employ 7,000 Federal workers full time.

The laws are already on the books, and the Government apparatus already in existence, to accomplish the objectives which S. 985 is said to seek.

This bill, which was before the Senate for 5 years, has actually been before the House for only 5 months. I submit that we would therefore do well to take a careful look at this legislative package—to examine its contents as well as its label—before buying it and passing it on to encumber the national economy and the American consumer at this time.

Thank you very much, Mr. Chairman and gentlemen of the committee, for allowing me to appear today.

The CHAIRMAN. Thank you, Mrs. May.

I noticed you quote several people who testified in the Senate. We hope to have all of them before us in the House.

Mrs. MAY. I realize that, Mr. Chairman. But, as I said, I had to tie my testimony to the transcript of the hearing I read, held before your committee last week, and I wanted to go where I had the cost analysis, which the Government officials did not seem to have.

The CHAIRMAN. Thank you so much for coming before the committee.

Are there any questions of Mrs. May?

Mr. Macdonald.

Mr. MACDONALD. Mrs. May, I am sorry I didn't hear all of your statement, but I think I got the gist of it.

I take it you are opposed to the legislation.

Mrs. MAY. Yes, I am.

Mr. MACDONALD. You are now talking about the Senate bill. How about the House bill? You didn't mention that.

Mrs. MAY. I am opposed to the House version of the Senate bill, shall we say, I am opposed to legislative restrictions in this field. I have followed Senator Hart's bill from the beginning, Mr. Macdonald. I know there have been changes made in it. But in going over it again, and I know the subsequent witnesses will go into the technical inexactness of it, I still think it is a mandatory regulation bill that is going to cost the consumer.

Mr. MACDONALD. In other words, you oppose the bill in toto, is that right?

Mrs. MAY. Yes, I do.

Mr. MACDONALD. Even the identification parts? You are opposed to those?

Mrs. MAY. In this committee, if you want to rewrite present law—

Mr. MACDONALD. No, I am asking you what you think.

Mrs. MAY. I am opposed to the bill in toto because you are rewriting present law. I might say, I think rather confusingly. Mr. Macdonald, I admitted I was not a lawyer, but I have a feeling if this bill in its present wording is enacted, it would be very confusing. It would confuse present law even more.

Mr. MACDONALD. You are not confused, I am sure.

Mrs. MAY. Yes, I am, by the wording of this bill, as to its implications under labeling, under packaging.

Mr. MACDONALD. Don't you think it would be a good thing to have the items in a supermarket or any store labeled truthfully?

Mrs. MAY. Yes, I certainly do. You have all the laws you need to do this.

Mr. MACDONALD. This, of course, is in the bill.

Mrs. MAY. This is in the law, Mr. Macdonald.

Mr. MACDONALD. When you oppose the bill in toto, you oppose that, too.

Mrs. MAY. No one is for deceptive labeling.

Mr. MACDONALD. But you said you opposed the bill in toto.

Mrs. MAY. Because we already have the laws against deceptive labeling and packaging on the Federal statutes. I do not want us to go into this field further where I will have to pay more for my food where we already have the right under law to cover these deceptions that have been talked about.

As I pointed out, the thrust of last week's testimony finally came to the point that the Government wanted to go into this to end confusion in the marketplace, rather than deception. I don't know how any law is going to do that.

Mr. MACDONALD. Don't you think it would help end confusion if people who are buying the products could see what is in the package?

Mrs. MAY. Do you mean to have it with cellophane sides so I could look into the inside?

Mr. MACDONALD. I might state what I meant. By seeing what is on the package, I meant by reading what weigh it was.

Mrs. MAY. This is already in the law. It has to have the contents and weight on every package.

Mr. MACDONALD. How about when they put towels and glasses and stuff like that in there? Wouldn't you like to find out just how much



of the product you were buying and how much you were paying for the glass and the towel?

Mrs. MAY. As I say, if I buy something—do you mean because I am getting a bonus and I know there is a special cup in a box of cereal? Is that what you are talking about?

Mr. MACDONALD. And glasses, that is right.

Mrs. MAY. Mr. Macdonald, if I want the cup and the glass that way, honestly, I am going to know that it is going to displace a certain amount of the cereal or the flour in there.

Mr. MACDONALD. Don't you want to know how much?

Mrs. MAY. One choice, one time, one purchase, will tell me that. It is like all of us in Congress. Our whole political system rests in informed people making wise choices. They have to vote for us once and see how we perform.

But all the packaging, all the labeling that we have now, unless a woman or a man, or a young person, buying at the marketplace, is willing to read it, to inform themselves and then act on it, it will not end the confusion at the marketplace.

She has to act on her information, her wisdom, and her experience. As I say, this is one thing I resent about this bill. Anyone that knows anything about business knows that a manufacturer cannot stay in business on a one-time shot purchase by Mr. and Mrs. Consumer. He has to have repeat business. If he is trying to give me a deceptive package, believe you me I am not buying it again and neither are 10 million other women. He is out of business and heaven help him.

Mr. MACDONALD. Thank you.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Thank you very much, Mrs. May, for your very thorough and complete analysis of your views.

On the question that I have asked the other witnesses, there seem to be two phases of this treated in this bill that might well be treated by amendments to the existing law.

You have read the testimony where the Chairman of the Federal Trade Commission said there was some doubt about proceeding against an industry. He didn't like to proceed against each individual case, although they did proceed against the industry in the cigarette case, as a first exception.

Would it not be all right to amend the Federal Trade Commission Act and authorize the Federal Trade Commission to proceed industry wide on a case where they found deception?

Mrs. MAY. Mr. Younger, no one could object to the proper implementation of law as needed and as testified to under any Government agency, whether it is the FDA or the FTC. If they need an amendment to the present law, if it is proven this is why they are not using all the authority they have testified that they have to have to take care of, cents-off, deceptive labeling, all these things, whatever they need to have should be given to them.

I honestly don't understand why they haven't proceeded where they had all the law to do it if this marketplace is supposed to be so full of deceptive practices, which I, for 1 minute, do not believe, by the way. But they have the laws there. We want them on the books. Whatever is necessary by way of amending the law as it now exists, I think

this committee certainly, legitimately, has the responsibility to proceed in this way.

Mr. YOUNGER. I have a feeling, as I expressed to Mrs. Peterson, that the real thrust of this bill is the first step to creating a new department in the Government called the Consumers' Department. It isn't to correct these things that they are talking about. It is a step.

If they came in to create this department today, the Congress probably would not accept it. But if we accept the first step, next year it is a different step, and finally they will get what they want.

Is there any justification for my conclusion?

Mrs. MAY. Mr. Younger, I would hesitate to try and figure out what is in the minds of any Government officials for future plans, any more than I would try to out-guess a fellow Congressman. However, you have been a Member of Congress for some years, as I have, for a few years, and I do know that this is a procedure we have all seen happen.

May I say this: I have great respect for Mrs. Peterson. I think she is a very capable and dedicated woman, with a great potential for giving leadership in the consumer education field. Mrs. Peterson and I are close friends and we debate this subject because we are heading for the same goal, only by different routes.

I think we could get there and do a real good job of it, as I have said in my statement, by helping make wise, smart shoppers out of today's young people, particularly, instead of legislative mandates which are really rewrites of present law. This means that certain leadership could come from the Government, and we have other tremendous resources—I think this is a responsibility of industry, too, to help, and schools, extension services, home economic experts, magazines—we have tremendous resources to make better shoppers out of today's women on a value-buying basis; simple price comparison is not enough.

We are taking the attention off the real answer to the problem with this diverting legislative approach. Whether there is a goal here to create a Department of Consumer Affairs for one reason or another, I don't know. But if it is, my concern would be what is that Consumer Affairs Department to be used for and what is it going to do?

Mr. YOUNGER. Thank you very much for the contribution you have made to our hearings.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Mrs. May, I was interested in your reference on page 6 to the high prices which our consumers would have to pay for the "nebulous protection" this bill might afford them. Of course, the price of an item will be based largely on competition in the marketplace. But even assuming a higher price that this legislation might achieve in products, don't you think that might be offset by the savings that consumers would achieve by a better comparative understanding of content and price of individual items?

Mrs. MAY. No, Mr. Jarman, I don't, because I don't think mandatory regulations on rules, pictures, packaging weights, will result in significant savings to the consumer.

Actually, there are two increased prices that we as consumers might have to pay. One is the additional cost to the food manufacturers, which will be passed on to the consumers, and then there is the loss of flexibility of the manufacturer and the retailer to try and please

us and compete at the marketplace with specials, true cents off, and other bargains.

As you know, today's shopper, can save 16 percent a year on her grocery bill—and that is a very considerable amount—just by buying specials. The reason we have specials is because our retailers and manufacturers have to survive in the most tremendously competitive business there is.

You have to please the consumer to stay in business. I want them to be in there competing just like mad all the time, with all the flexibility they have to please me. This is going to cost me less, I will be better fed, and I will have better products to choose from.

When it comes to good value buying, price comparison is only one part of the question. I now have everything I need on my label. I can buy by servings for my family. I know that maybe oatmeal, for instance, costs me less than, let us say, bran flakes or Wheat Chexs. But if I cannot get my children, husband, and family to eat anything but Wheat Chexs, buying oatmeal by price comparison is certainly not a good value for me.

I will have a box of oatmeal or some other cereal sitting on the shelf and that is a full waste of whatever the cost of it was. Price comparison is only one part.

An informed shopper is buying values and she has to be educated to do this. She has all the labeling now, the weights, the contents, the servings. If she isn't sure, one purchase will tell her whether it is what she wants or not.

Mr. JARMAN. Thank you.

Mr. MACDONALD. Mrs. May, if you object to this bill in toto, you are objecting to the very thing that you say guides you in the purchase of foods.

Mrs. MAY. I don't understand that.

Mr. MACDONALD. I don't know why you don't understand it. Part of the bill which you say you object to in toto has to do with the proper identification, the proper weight, et cetera.

Mrs. MAY. Mr. Macdonald, we already have it under the law. Our labeling people are under very strict regulation now as to weight, contents, a list of ingredients. They have to list the ingredients by the greatest amount first, and I know how to read it. Your wife knows how to read it.

If someone doesn't follow this law or deliberately intends to deceive, you have all the laws in FTC and FDA to move right in on them.

I have no objection to rewriting present law in part of this bill. It just seems to me that Congress right now ought to be expending more time figuring out ways to cut food costs, not increase them.

The CHAIRMAN. Are there any further questions?

Mr. Nelsen.

Mr. NELSEN. I wish to thank our colleague for the very fine statement.

I would like to point out at this time that I am a little bit disturbed about the deception that seems to be practiced in the presentation of some of the points dealing with this bill. For example, the other day two packages of a Pillsbury product were exhibited as evidence of deception of labeling, and the contents of the two packages were not the same.

We have these two packages today. One is the bright, new box, I assume the new package which has been used in substitution for the old one. The content is not exactly the same, but the manufacturer did not put the price on it. The retailer did. So there is some deception in the sale on the point used here.

As you have pointed out, the size of the package, if we are going to put a new line in, is going to be very expensive as far as production is concerned, whether it is filled to two-thirds of its level or completely full being a minor thing. But the weight is on both packages. The ingredients are shown.

The thing that has been bothering me has been the deception. We are getting letters from people who are asking us to do things that we have already done. To me, as has been pointed out on the floor by one of our colleagues, this means that we are passing labels in the Congress, political labels, and I am beginning to sense a little of that in this legislation.

Mrs. MAY. Might I point out to my colleague, because I certainly do agree with him, on the example that my distinguished colleague, Mr. Halpern, used, you might also pick up one of those packages and find an overfill of ounces. You know how cereal boxes are filled by mechanical means. They fill with so many boxes to a carton for a hundredweight measure. So some of the fractional weights may be over what is labeled on the package because they do it by the whole case.

He might have gone and picked the next package and found out that it had more in it. On filling cereal, you know you don't want to spill it all over your kitchen shelf when you open a package packed with that type of a product. That is why it is not packed to the top. It is a deliberate reason. Plus the fact that moisture changes in these packages can cause trouble if they are filled to the top.

The thing is by law you have to put your contents, weight, what is in it on the label. The price, of course, is up to the retailer.

Mr. NELSEN. I noticed on your package of feathers there was no price. I have a friend who ties flies for fishing, and if the price is right I would like to buy those.

Mrs. MAY. I will be glad to donate my fishing weights to the members of the committee now that I have finished with my example.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. I, too, am somewhat concerned that no figures have been presented as to what this may cost the consumer other than the point that it would increase the cost. I am also concerned about the present law. I have asked the Federal Trade Commission and the Food and Drug to give us their suggestions and amendments to present law which they feel necessary.

I am also concerned that probably the largest item of a food bill for a family would be meat and meat products, poultry and poultry products. Yet, they don't attempt to cover these in this bill.

If that is the major price concern for a family buying food, and I would think they are probably the highest items, and they say all of this confusion exists, why do they exclude it from the coverage of this bill? Do they feel present authority exists for meat and meat products?

Mrs. MAY. This is correct, Mr. Rogers; it does.

Mr. ROGERS of Florida. It makes me concerned about whether we do have sufficient coverage under present law for all products, or maybe there should be a minor amendment or two to present law. I believe in Food and Drug they even get into quality.

Don't they now tell what percentage peanuts must be in peanut butter?

Mrs. MAY. That is right. They have the right to set out those regulations.

Mr. ROGERS of Florida. I am very much interested in going into the present law and going into it thoroughly to see what amendments might be necessary to present law.

Mrs. MAY. I think that is what would be necessary to solve the approach to this.

Mr. ROGERS of Florida. Thank you very much.

The CHAIRMAN. I would like to say to the gentleman from Florida that we have asked the Department of Agriculture and the Department of the Interior to testify before this committee.

Those questions will be answered by them in due time. I feel certain Mrs. May cannot authoritatively answer those questions.

Mrs. MAY. I am somewhat familiar with it but I wouldn't want to get into the legal technicalities. I know how the meat inspection and control and regulation over the meat industry works.

The CHAIRMAN. I thought we would have the authorities who control it come and answer the question.

Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mrs. May, I know of the tremendous work you have done on the Agriculture Committee and your knowledge in this field.

I want the committee to know that Mrs. May, myself, Congressman Rosenthal, Congressman Purcell, and Congresswoman Sullivan were the five Members of the House who spent 18 months on the Food Marketing Commission. I am sure that broadened our knowledge in this field, although our study was much more involved than this particular subject today.

On page 6 of your statement, in referring to the Senate bill, you say, "In addition, it is an inflationary time bomb which would result in higher food and grocery prices throughout the country."

I am inclined to feel just the opposite. I think if we eliminate deception and have greater competition it might have an opposite effect.

Be that as it may, with your knowledge as a member of the Agriculture Committee, and the information that we gathered as members of the Food Marketing Commission, how do you sum up the reasons for the 2-cent increase in a loaf of bread which I understand is going into effect? There is no change in packaging. And it certainly is inflationary.

Mrs. MAY. I think here, Mr. Cunningham, as we studied on the Food Commission, this cost-price spread—and we know very little of it has to do with the original cost of wheat—is increased labor cost, increased transportation cost, increased packaging cost, and all the things that we so carefully set out in our Commission study.

Naturally, now that we have a nationwide inflationary spiral it may be that all of these costs in our Commission report are already out of date, because I am sure that the various things have already gone up.

Then, if you add a new packaging cost, that is something more to add to the cost of the final product. The small businesses we found to be the hardest ones to make entry into these markets.

With this, you would have real trouble for your small businessman who is already having a much harder time under the burden of inflation than the big businessman.

Mr. CUNNINGHAM. I believe the spokesman for the bread people said it was due to labor and materials. There have been no changes in packaging so far as bread is concerned.

Mrs. MAY. No; none at all. If this bill were passed, that would be on top of the already high price of bread.

Mr. CUNNINGHAM. I have no intention whatsoever, and I have so voted in the years I have been here, of not supporting things that would be helpful to labor, so I am not objecting to what they receive. But I think we ought to be honest about it. It is the labor cost, and it is the transportation cost, evidently, causing this 2-cent increase in the price of bread. Certainly, it is not the farmer who is getting this increase.

Mrs. MAY. I am delighted the gentleman makes this point. He and I agree on this. We had discussion about a bread tax in a certain bill not too long ago. He and I both disagreed with that theory because we know that the price of wheat flour has very comparatively little to do with the ultimate price of bread. Our Commission on Food Marketing study pointed that out.

This added cost to the manufacturer and retailer, is labor, transportation, the increased cost of the materials, this sort of thing. That is why, of course, I think he should be given the advantage of every cost-cutting factor he can be given, and good economical methods, to still keep us the best-fed people at the lowest cost of any people in the world. I want it to stay that way.

Mr. CUNNINGHAM. I am for the principle of this legislation, unless someone changes my mind. I don't say I am for the bill as written. I don't mean I will buy everything in this bill. I don't want to injure anybody, but I want truth in packaging and labeling.

Mrs. MAY. Mr. Cunningham, I couldn't agree more. You and I are both for that. There is no one who could be against truth in packaging. I am just submitting that you have the law now to enforce this. If something is needed in the way of amendment to the proper agency, that would be the sound approach.

Mr. CUNNINGHAM. But I can't be convinced that this bill would contribute to inflation. I think in my own judgment it would probably be just the opposite because it would probably bring about more competition.

Mrs. MAY. With the cost of food manufacturing obviously going up? You would have to change your methods of canning, processing, packaging, you would have to change your equipment, all the things that over the years our processors, canners, and manufacturers have developed to do an economical job and pass the savings on to us? I don't fool myself, Mr. Cunningham.

If they are forced up by millions of dollars of cost, that cost is going to be passed on to me, the consumer.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. MACDONALD (presiding). Are there any other questions of the witness?

Mr. ADAMS. Mr. Chairman, I wanted to thank my colleague from my home State for being here this morning. I think her testimony was excellent.

I would like to inquire about one thing. I assume you are familiar with the fact that in the Weights and Measures Division of the Department of Commerce they have attached proliferation already in a number of industries. For example, 49 different types of milk bottles were reduced to 9, and 10 types of milk bottle top containers were reduced from 10 to 1.

Would this not produce savings in basic industries if this were done, as it had been done in the canning industry and the milk industry?

Mrs. MAY. On a voluntary basis wherever there are to be savings effected by the manufacturer, he will do it, of course.

Mr. ADAMS. You had the 1 pound of feathers. I would like to ask you if you believe that in American industry at the present time they compete by means of maintaining a single price and reducing quantity contained in a single item?

Mrs. MAY. No; I think competition is all on the basis of quality, the attractive and the convenient container.

Mr. ADAMS. Then I just ask you this: If we take that pound package that you had of feathers—

Mrs. MAY. And which I don't know where I would store on my shelf.

Mr. ADAMS. Right—and one of them has 1 pound,  $5\frac{3}{10}$  ounces for 71 cents, and an identical package has in it  $15\frac{3}{11}$  ounces at 56 cents, which is the better buy, assuming identical feathers?

Mrs. MAY. As I say, this is the decision that I have to make, depending on which kind of feather I want.

Mr. ADAMS. No; they are identical feathers. One is called the large economy size and the other is the jumbo size. One has 1 pound,  $5\frac{3}{10}$  ounces at 71 cents, and the other has  $15\frac{3}{11}$  ounces at 56 cents.

Mrs. MAY. I don't make my choice on that.

Mr. ADAMS. They are identical size.

Mrs. MAY. Then I want the big jumbo size of either size, or the large one, or whatever you want to call it, depending on what kind of package I want. In this case, if they are identical size and identical feathers, I will take the lowest cost one.

Mr. ADAMS. Which one costs the least?

Mrs. MAY. Whichever the price is on the outside of the package.

Mr. ADAMS. One is 1 pound,  $5\frac{3}{10}$  ounces at 71 cents and the other is  $15\frac{3}{11}$  ounces at 56 cents. Which is the cheapest?

Mrs. MAY. Frankly, as I say, there, again, you get into what you call your slide rule thing. But I don't look at it, because I have the weight on it, by law. Feathers was an extreme example, but I also have the number of servings, and that is where I make my comparison, not on the fractions. But on the number of servings, what I am going to use it for. I leave my slide rule at home.

Mr. ADAMS. I have always wondered, how do you get an exact 1 pound of apples as required under this bill, unless you take a bite out of the apple?

**Mr. ADAMS.** Mrs. May, here is what I think is happening, and we are trying to do something with it. This is a weight-and-measure bill more than anything else. Industry is having to compete and they are having increased costs but they don't want to raise the basic price on the shelf because the housewife has been buying on a price. They advertise in terms of different sizes, jumbo, El Supremo, and put another label, a picture, more cherries, they do all that, and at the same time, in order to compete, and I think it is very legitimate—I don't think it is dishonest or fraudulent—they will have to drop their quantities a little bit.

It is not a lot. This is where you get your one-third ounce or two-thirds ounce. It is a tight business. A penny or a half penny profit on a package may be the profit. As consumers, all we want to do is compare prices. If I give you identical feathers in an identical box but I vary the amount and go into pounds and fractional ounces and into an odd figure, I couldn't compare it.

While you were testifying, I was figuring out this little example. It took me 10 to 15 minutes.

**Mrs. MAY.** That is not the way you shop, Mr. Adams. That is what I am trying to say. You have this on your packages for comparison. You have the information you need on what I call value comparison as well as price comparison.

I have no objection to jumbo and economy size. I am sure you don't. We have always used these terms, "small," "medium," and "large." It used to be plain society and now it is Great Society. Tomorrow it may be jumbo society. I don't know. These fractional weights that everybody keeps bringing in, I just don't happen to believe are what are giving American shoppers any trouble in becoming good value shoppers.

**Mr. ADAMS.** If those feathers are identical, you say you don't really care whether one costs more as long as you have the package and you have been buying the brand or whatever it is, and you say you are satisfied, even though he may have dropped it a third of an ounce or two-thirds of an ounce because of the competitive situation.

**Mrs. MAY.** I know he uses similar size containers to package many products which affords an overall savings for him of his products.

**Mr. ADAMS.** Doesn't it necessarily drive the manufacturer and the retailer, then, to the lowest level? In other words, the pressure is always on him because if his competitor dropped it as he did with this package to  $15\frac{3}{11}$  ounces at 56 cents, then he has to drop his price or he will not be competitive in the market and his profits will drop. I mean competitive in terms of his profits.

I couldn't tell between the two packages which was the better buy.

**Mrs. MAY.** He is always going to have to meet competitive practice.

**Mr. ADAMS.** One of them, incidentally, will cost you 6 cents a pound more in that example.

**Mrs. MAY.** If that example were typical of the various different weights today, and it isn't. I used an extreme example and you have used one, too, which is what we do for purposes of argument. But it is not the rule of thumb in the marketplace today.

**Mr. MACDONALD.** Mr. Van Deerlin.

**Mr. VAN DEERLIN.** Thank you, Mr. Chairman.



It seems to be the impression that we have quite a bit of feathers in S. 985.

I wonder if on page 7 of your statement, Mrs. May, you might identify by category the manufacturers to which you referred in paragraphs 1 and 2.

Mrs. MAY. Do you mean where I gave the quotes from the Senate testimony?

Mr. VAN DEERLIN. Yes. This is one the increased costs to the manufacturer under this legislation.

Mrs. MAY. I don't have the Senate testimony with me. It came directly from the Senate testimony, however. It would take a moment or two. You want the name of the man and the company represented.

Mr. VAN DEERLIN. I would say what category, not the company name.

Mrs. MAY. I said a cereal manufacturer.

Mr. VAN DEERLIN. I was wondering if the first two might be dealing in canned products.

Mrs. MAY. I only used a few. There were many, many examples. I can supply this for the record, if you wish.

Mr. VAN DEERLIN. It is in the Senate testimony.

Mrs. MAY. I would have to go back. I have all of this material in my office.

Mr. VAN DEERLIN. Mr. Adams and I were just this morning at the National Canners Association to look over the various size cans, and talked with some of their officials. We came away with the impression that they thought that there were going to be some costs in here that we do not see in the House legislation.

Obviously, if there were evidence that there was going to be a considerable rise in manufacturing costs to comply with this legislation, we would try to meet it. I would think that maybe some of these examples are what the manufacturers may be reading into the legislation, and where we could tighten it up.

I am sure in the canned foods, which is such an efficient industry already, and one in which there has been a great deal of progress in voluntary compliance through the years, we could probably do away with some of these fears very easily in the legislation.

Mrs. MAY. I would certainly hope so. As my distinguished colleague from Washington, Mr. Adams, and I, do live in an area which certainly represents the tunafish canning business, with me representing vegetables and fruits. I am very familiar with canning operations, particularly of the smaller operators, the cooperatives and others, where their very ability to stay in business is to use cost-cutting machinery and methods for fruits, vegetables, and fish.

There are differences in the density, and weights, of course, as Mr. Adams can tell you, between tunafish cans. It is not because our tunafish packers on the west coast want to deceive consumers, but because I want to buy my tunafish in brine for one purpose, solid pack for another, and they do this because they know that is what the shoppers want. It is not to deceive them.

To me, this proliferation is catering to the consumers' wants in these fields, and changes which would make it impossible for them to do this in their cost-cutting machinery would, of course, be extremely in-

jurious to their economy. They can't adjust to it half as quickly as the bigger businesses can.

Mr. VAN DEERLIN. Thank you.

Mr. MACDONALD. Mr. Pickle.

Mr. PICKLE. Mrs. May, I just want to make sure of the position you have taken. I have enjoyed your testimony.

Sections 3 and 4 of the bill pending before this committee deal primarily with making certain that the labeling, the weight and the contents are clearly stated on the package, plus the prohibition against such qualifying phrases as "giant" and "jumbo."

Is it your position that the manufacturer ought to be able to put giant and jumbo or family size on the package?

Mrs. MAY. Yes. I don't get hysterical over this. He either has to say small, medium, or large, but he wants to show me that this is a bigger soap package to use in my laundry room, so he can call it jumbo if he wants. I know what he is trying to say.

As I say, we raise potatoes and apples in my district and you have to package those. How are you going to get an exact pound of apples or potatoes? He can't say approximately 1 pound. It has to be 1 pound, period. Under this legislation, it will be kind of difficult to live with.

Mr. PICKLE. If you say that the manufacturer ought to be able to say giant and family size and jumbo, then I would assume he could say "cents off"?

Mrs. MAY. As long as it is legitimate cents off. If not, that is where the FTC should zero in and get that guy. They have the law to do it now. Mr. Dixon testified to that.

Mr. PICKLE. Is it your feeling that we have enough laws now to prevent cents-off advertisement?

Mrs. MAY. Absolutely. Mr. Dixon testified that we have that in the law. They should be moved in on if they use that cents off deceptively.

Mr. PICKLE. Thank you.

Mr. MACDONALD. Mr. Satterfield.

Mr. SATTERFIELD. Mr. Chairman, I am sorry that business in another committee prevented me from hearing my distinguished colleague. I assure her I will read her testimony with a great deal of interest.

Mr. MACDONALD. Mr. Mackay.

Mr. MACKAY. I have one question, Mr. Chairman.

I was interested in your testimony, Mrs. May, and I wanted to ask you, based on your extensive study of this, whether you feel that the Federal Trade Commission and the Food and Drug Administration are vigorously prosecuting under existing laws; whether you think this has arisen out of the slackness of existing Federal agencies.

Mrs. MAY. Mr. Mackay, I would not like to make a straight statement of "Yes, I agree with you." I would say that all evidence up to date would lead me to feel very strongly that this might be the case.

Mr. MACKAY. I am sure that you have attracted a great deal of mail from your appearances and your writing on this subject. I wondered if you had received any complaints about the inadequacy of present law.

Mrs. MAY. Amazingly enough, and I have been interested in this field since shortly after I came to Congress, but I have had very little complaint. Of course, I haven't done anything to try to engender it,

except I have been certainly speaking a lot about this and trying to warn people what is in the bill, costwise and everything.

I have had very little complaint. The complaints that I have on record, all of them, are covered under present law and I write them and tell them this, and tell them what to do.

Mr. MACKAY. Have you received much response otherwise?

Mrs. MAY. No. This is why I think that the American consumer is a kind of a happy consumer, Mr. Mackay, except when the prices go up.

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Watson?

Mr. WATSON. I have no questions.

Mr. MACDONALD. Mr. Gilligan?

Mr. GILLIGAN. I have no questions, thank you, Mr. Chairman.

Mr. MACDONALD. I just have one question, Mrs. May.

I was wondering how you came about this knowledge concerning the manufacturers' points of view. How did you come about this knowledge? Did they write to you?

Mrs. MAY. I was the chicken that came before the egg. I come from a 100-percent rural district. I have no big business or big manufacturer at all in my district. I am interested in the canners and processors viewpoints from the technical side. But I came to Congress thinking that this would be the kind of thing that, as a woman, I would be interested in. Then I got the surprise of my life.

I decided that this consumerism movement was going to be far more restrictive on me, so I have tried to be kind of a spokesman for the other side of this, as far as consumers are concerned. I don't think I want to pay for all of this so-called protection that much, and I don't want to lose the freedom of the marketplace where I, as a consumer, am the boss. This has been the tenor of my remarks.

Mr. MACDONALD. I am sure you are the boss, Mrs. May. Thank you very much.

Mr. Kornegay?

Mr. KORNEGAY. I regret very much that I was not here to hear your testimony, but I have read it and it is a very fine statement on the subject.

I wish to thank you for the information you have given us.

Mrs. MAY. Thank you.

May I say that I heard your opening statement and I hope in the wisdom of the chairman's viewpoint, and your viewpoint, we can work on the airline strike which is of real concern to the national consumer.

Thank you.

Mr. MACDONALD. Our next witness will be Harry Schroeter, vice president for packaging, National Biscuit Co.

#### **STATEMENT OF HARRY F. SCHROETER, VICE PRESIDENT FOR PACKAGING, NATIONAL BISCUIT CO.**

Mr. SCHROETER. Mr. Chairman, and members of the committee, my name is Harry F. Schroeter, and I am vice president for packaging of National Biscuit Co. I would like to express my appreciation for this opportunity to appear before this Committee on Interstate and Foreign Commerce. We had hoped that the president of our company, Lee S. Bickmore, might be able to appear, representing both Nabisco and

the Biscuit & Cracker Manufacturers Association, of which he is also current president.

However, his long-established schedule required an earlier date than the committee was able to assign. Although he must be in another part of the country today, he is familiar with the views I will express and endorses them for both Nabisco and the Biscuit & Cracker Manufacturers Association.

Nabisco has taken a deep interest in this investigation of packaging and labeling since it was begun in 1961. Mr. Bickmore testified in February 1962, at the request of the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee. Last year he appeared before the Senate Commerce Committee to present Nabisco's view on S. 985.

Nabisco's concern with packaging goes back much further. Soon after the company was formed in 1898, it introduced Uneeda Biscuit, the world's first packaged cracker and, indeed, one of the first packaged grocery products. More recently we were a founding member of the Food Law Institute in 1949. We were also a founding member of the Cereal Institute and participated in their development of principles of good labeling practices.

We applied those principles to all of our packages—not just to cereals—as soon as they were formulated. Further we participated in the development of the model statute endorsed by the National Association of Weights and Measures which has been adopted by many States. We apply these regulations to all our packages, following the most demanding requirements.

We have done and will continue to do these things because we believe it is the honest thing to do. We believe strongly that we are in business to earn the right to make a profit. We earn this right by giving consumers the best values possible. Nabisco can succeed as a company only as it succeeds in satisfying the needs and wants of American consumers.

My testimony will be directed to H.R. 15440. However, I will also mention proponents of the legislation, and that phrase is used to refer to those who so vociferously advocated S. 985 or its ancestors in the various Senate committee hearings on the floor of the Senate and in public.

Some of these proponents have already appeared before this committee earlier.

During a business career of more than 30 years, I have never before seen such unanimous business opposition to proposed legislation. Nothing I have experienced has generated such unanimity among my associates in Nabisco, among the membership of the Biscuit & Cracker Manufacturers, among fellow members of other trade associations and among packaged goods manufacturers in general. I have wondered why this should be so.

After much thought, I think I have determined why. The reason goes beyond any particular provision or any particular feature or area of business. I think the reason is because there is a fundamental clash of philosophies between the proponents of this legislation and the business community. I would like to point out these fundamental differences.

One, we believe in and respect the American consumer. We rely on her acumen and ability to choose what is best for her family. Proponents of this legislation downgrade the consumer's intelligence and want to dictate her purchases.

Two, we believe in the marketplace with freedom of fair and moral competition for consumer selection. Proponents fear free competition and would throttle and limit it to price competition only.

Three, we believe in progress through American ingenuity, invention, and innovation under free enterprise. Proponents fear freedom of enterprise and want to substitute bureaucratic conformity, restriction, and stagnation.

Four, we keenly anticipate a future of greater consumer choice and increased consumer satisfaction. Proponents fear the future and want to curtail and freeze the present.

Thus, the views I will express today are the result of careful study over a long period of time. I am gravely concerned about the proposed legislation—H.R. 15440—because thorough deliberation has convinced National Biscuit Co. and myself that enactment of this legislation would be against the best interests of the people and consumers of the United States. From the consumers' standpoint it can best be characterized as the "low choice high cost packaging bill."

By unanimous vote the board of directors of the Biscuit & Cracker Manufacturers Association has adopted the same view. Members of the association have an annual sales volume of approximately \$1,500 million. The 67 U.S. members employ almost 50,000 people. Only a handful of these companies are national and publicly owned. The vast majority are small enterprises, usually family owned and serving a limited market area or specializing in particular types of crackers and cookies.

Proponents of the legislation say much about confusion on the part of the housewife. They maintain that she is bewildered by the great number of products on sale in our supermarkets, by a profusion of different weights and package sizes in which products are offered for sale.

Nabisco lives very closely with consumers. We work hard to learn about consumer needs and preferences. Starting with this information we then try to design and produce our products and packages to please housewives. It is important to remember that the biscuit and cracker industry, as well as other packaged grocery goods, depends upon repeat sales for its success.

This fundamental point is frequently omitted by advocates of restrictive controls. They forget that we run for reelection millions of times every day. If we do not satisfy consumers, if they do not trust our products and packages, they will desert us for competitors or for other types of food which do satisfy them and which they do trust.

This is the law of the marketplace. Satisfy your customer—or lose her. We have nothing to gain by falsely representing our merchandise for an initial sale. We can only hurt ourselves. Our merchandise bears the Nabisco trademark, our mark of quality, and every package we sell must increase consumer faith and confidence in products that carry our name. We know from long observation of the marketplace in action, that a cheating competitor is soon found out. Consumers leave his package on grocery shelves. He is soon displaced.

We believe that if consumers were confused or opposed to current packaging and labeling practices, we would know about it directly. We get no such message from our consumer mail which is substantial. nor do we hear about it from the more than 3,000 Nabisco salesmen serving in grocery stores all over the United States every day.

Proponents of the legislation point particularly to potato chips as causing great consumer confusion. I do not know the source of their facts, but many proponents say that potato chips are packed in 71 different weights—some say 74. They would have you believe the housewife must struggle to make a choice among this many possibilities, that she is confused—not served thereby.

What is forgotten is what consumers look for and want in potato chips. Some seek thin chips, others prefer theirs thicker; some like little chips, others demand large ones. Some like them ruffled or crinkled, others do not. Some want them flavored, others prefer the regular kind, but everyone wants chips that are fresh and crisp.

Packaging that keeps chips well in Arizona would be inadequate in Louisiana or Florida. And the consumers want different sized packages for different purposes. A small package will suit a couple watching television. When they give a party they need far larger units. Teenagers' appetities are larger than their grandparents'.

At a ball game or a roadside stand, packaging is different again because the distribution system requires it.

Treating this as a business problem—and let me add that Nabisco is not in the potato chip business—we thought we would learn what the facts are just as we would for any other business problem. So we asked our divisional sales managers to survey actual potato chip offerings in their territories. Our 20 divisional sales managers are located in population centers around the United States.

Each of them surveyed about 10 large grocery stores and reported all the different weights and packs in which potato chips were being offered for sale to shopping housewives early in the month of July.

Altogether we collected data from 198 different supermarkets. Here is what we found. In these stores the average number of packs offered was 17 and those 17 packs represented only 9 different weights on the average. This is a much different picture than 71 or 74 weights, I think you will agree. We do not believe that these facts support the arguments of the proponents of the legislation.

Interestingly enough, consumer choice is the reason for even this modest number of different weights—only nine, you will remember.

First of all, manufacturers frequently offer chips in different flavors, barbecue, onion and garlic, green onion, even chili. Often these flavors are offered in slightly lower weights for the same price as regular potato chips. Another feature is that different packs will be offered.

At approximately the same weight, the housewife can buy a combination of individually wrapped small packages, or she may prefer two or three inner bags or just a single unit. The spread of weights for this different packaging amounts to less than an ounce but is another reason why packages of nine different weights are offered by the average American supermarket. So we don't think consumers are bewildered by the weights. We are sure they regard them as less important than having a broad selection of flavors and of packaging to meet their needs at any particular time.

Then too, some manufacturers will offer for the same price more weight than their competitors. Certainly this is competition at its healthiest. Offering the housewife more for her money is competition just as truly as charging less for the same weight. It may even be clearer, mathematically.

To a very great extent, H.R. 15440 restates existing law, at least as far as foods are concerned. Since 1906 there have been Federal food laws. For almost 60 years Food and Drug officials have addressed themselves to the very problems that proponents are now concerned with.

During this period of time, the American food industry has performed an economic miracle. Americans are the best fed people in the world. Our standards of nutrition are not even approached in other countries. As prosperity has come to more and more of our families, they have demanded greater and greater variety of foods, more convenience in packaging and an increasing range of sizes and varieties to meet particular needs and desires.

This has come about by the application of mass production techniques, by the adoption of increasingly severe standards of sanitation and quality control, and by wider application of improved protective and convenience packaging. Efficiency has resulted in the lowest food bill for any people anywhere in time.

This very year, Americans will spend only about 18 cents out of every after tax dollar for food. In Western Europe the comparable figure is about 30 cents. Behind the Iron Curtain it rises to more than 50 cents.

This has been achieved with food regulations under existing law. Existing law does not specify in detail how a label should appear nor does it control the weight, shape, or dimension of packages. It has a simple basis. A package that is deceptive in any way is misbranded—and so, unlawful.

Out of this the Food and Drug Administration has formulated easy to follow rules and, in cooperation with the States, has striven toward uniformity of regulation which is essential to the efficiencies of mass production in the national market.

If the proposed legislation merely rewrote the existing law, we would think it unnecessary, but would not oppose it. However, in many respects H.R. 15440 goes far beyond anything known in the United States before. Some of the specific points covered are unreasonable and can only deny food processors the benefits of mass production techniques and deprive customers of choices they now exercise freely. Let me illustrate some of the problems which will be caused by the proposed legislation.

For many years, the FDA has required that weights over 1 pound should be stated in pounds and ounces. Such a provision is also required within their borders by 28 States. That means that a package like this spoon-size shredded wheat must be clearly labeled 1 pound, 2 ounces as you see it. The proposed legislation instead demands that the total number of ounces be stated.

This package would have to be labeled 18 ounces; that is if it moves in interstate commerce. If the package is to be sold within the State where it is manufactured, only the State regulation will apply, and, as I said, 28 States require the use of pounds and ounces.

This package of cereal is made in Niagara Falls, N.Y., and Oakland, Calif. It is widely sold in both States. To comply with the laws of New York and California, we would have to continue to label it 1 pound, 2 ounces. To comply with proposed legislation, we would have to add a second weight statement reading 18 ounces. We think this will only confuse the housewife even though elimination of confusion is one of the alleged purposes of the legislation.

Perhaps proponents think we should have two packages—one for sales inside New York and California and the other for interstate commerce. This would raise our costs because of the necessity of maintaining two inventories of both types of packages, and we would be unable to take advantage of long uninterrupted production runs—a most important requirement for efficient production.

Another proposal gives authority to the administrators to require "information with respect to the ingredients and composition." Statements of ingredients have long been required on all U.S. food packages. We are required to list these in descending order of amount in our formula. What more could be needed or required we do not know and the proponents do not say. However, great mischief could result if administrators should require additional information.

Many of you will recall, I am sure, the sugar price inflation of 1963. Sugar rose in price from about 9 cents a pound, upward of 15 cents and then back to 10 cents within a space of 6 months. All bakers were scrambling for sugar and were forced to depart from normal supply sources.

In general we use cane sugar in our Eastern bakeries and beet sugar in the West. Not only were we then trying to obtain sugar from any source, we were hard at work trying to find sugar replacements so that production could continue. Had our package materials specified cane or beet sugar (which might well be required) we would not have been able to respond to the critical situation and keep merchandise flowing into grocery stores of the United States.

As another example, perhaps country of origin might be required. If so, we would have a real problem in fig newtons cakes which are filled with a mixture of domestic fig paste and other pastes imported from several different countries. As prices and supplies vary from year to year, we vary formula. Only rarely can we obtain certain of exact proportions in advance.

How adding information like this to ingredient statements on packages would help housewives we do not know. I think it would be exceedingly unwise for Congress to delegate such broad powers to administrators, who, however well meaning, could not possibly anticipate sudden and critical changes in supplies. We can rarely anticipate all of them ourselves, but we try to retain flexibility so that they can be met when they arise.

Those are a few examples of the problems in labeling which can easily arise under the proposed legislation. However, H.R. 15440 goes far beyond labeling and provides for standardization of packaging.

The chief objective is to provide for weight standardization. As we understand it, this could require that crackers, for example, be packed in weights of 8 ounces and 1 pound only. For cereals, the standard weights might be different.



In the Senate Commerce Committee report which was filed with S. 985, on pages 3 and 4, two examples of standardization are cited in support of weight standardization. The two examples are can sizes and the sale of alcoholic liquors in parts of a gallon—quarts, fifths, and pints.

Let me read the two consecutive sentences I refer to:

The voluntary standardization of can sizes through the Department's procedures is probably the outstanding instance of such successful cooperative effort involving consumer commodities.

The uniform marketing of liquor in pints, fifths, and quarts also supplied the committee with a concrete example of weight standardization.

There is confusion and misunderstanding somewhere. The examples the Senators cite are standardizations of volume. They have nothing to do with weight.

The standards for cans consist of two figures. The first is diameter, the second height. Both are stated in inches and sixteenths of an inch. For example, a No. 303 can is defined as 303 by 400. This means it has a diameter of  $3\frac{3}{16}$  inches and a height of 4 inches. It is perfectly apparent if you fill a can of such dimensions with popcorn, or potato chips, that the quantity of popcorn or potato chips will weigh less than the same volume of mashed turnips or sweet potatoes or peaches in heavy syrup.

A prominent proponent of the legislation said on the Senate floor that all canned soups would be exempt because they were packed in standard cans. However, the leading line of soups in the United States uses what is known as a No. 1 can—one defined as 211 by 400, meaning  $21\frac{1}{16}$  inches in diameter and 4 inches high.

But the weights of the soups so packed in that size vary considerably. In the grocery store some are marked  $10\frac{1}{2}$  ounces, others  $10\frac{3}{4}$  ounces, still others 11 ounces,  $11\frac{1}{4}$  ounces, and  $11\frac{1}{2}$  ounces. Thus, there is no such thing as standardization of cans by weight. There is only standardization of volume.

Regarding the other citation, sale of liquors as example of weight standardization—it is a fact that the official U.S. definition of a gallon is 231 cubic inches. A quart is one-fourth of that cubic content, a fifth, one-fifth and so forth.

This standard of volume again has nothing to do with weight. Alcoholic liquors vary in their density and hence in their weight. Even though this should be obvious, I asked our laboratory to supply some facts. They told me that a quart of 100-proof liquor like vodka will weigh 1.9 pounds or about 1 pound  $14\frac{1}{2}$  ounces. On the other hand, a quart of a popular cordial like creme de menthe will weigh 2.3 pounds or about 2 pounds 5 ounces.

Those proponents are confused on standardization. The bill they advocate calls for standardization by weight. The examples they cite are standardizations by volume. The volume standardization is necessary to achieve the efficiencies of mass production.

Weight will vary with the density of product, as it did in the case of soups and liquors. Consequently, the weight marked on the package will sometimes be in even ounces and sometimes in odd ounces, depending, in the case of baked goods, upon the density, shape, size, and other features of the product being baked.

I want to demonstrate this to you gentlemen. But before I do, I would like to tell you a little about the production methods used in the biscuit and cracker industry.

Since 1945 Nabisco has spent more than \$290 million on building and equipping the most modern bakeries in the world. They were designed and built to operate on a straight-line production basis. Raw materials are received at one end and finished product leaves the other.

The backbones of these great plants are their continuous ovens. These ovens, which were designed and built by Nabisco engineers, are 300 feet long. Each is capable of producing many millions of crackers and cookies daily.

Such prodigious production is possible only because these ovens are served by high-speed, automatic packaging machinery capable of keeping up with them. A single oven bakes 40,000 pounds in an 8-hour shift. The packaging line servicing this oven has to be able to handle that enormous production flow.

Incidentally, Nabisco would be pleased to have members of this committee and its staff tour one of these bakeries to see how great is Nabisco's interest and investment in providing products and packages to please and satisfy the American family.

Now, let me return to standardization by volume.

Here is an 8-ounce package of Ritz crackers. It was originally designed in 1935 for that product. While it has been modified slightly we now use it to package 14 other varieties of crackers.

Only 2 of these 15 varieties fill the package at 8 ounces. For the remaining 13 products, it takes more than 8 ounces to reach the same level of fill. The declared net contents of the 15 varieties are:

Number of varieties:	Net weight (ounces)
2-----	8
1-----	8½
3-----	8½
5-----	9
1-----	9¼
1-----	9½
1-----	9¾
1-----	10½

Thus, there are eight different weights packed in the same size package. The proper weight is dropped automatically into the top of the package which then moves on to other machinery which folds and seals the inner glassine paper, then closes and glues the top flaps of the carton itself. All this happens at the rate of 81 to 130 packages per minute, depending on the product.

Here are four transparent packages of the exact inside dimensions of this Ritz package. The black line represents the level to which we now fill to obtain declared net weight.

The space above that line is required for the machinery which closes the package as I have described. Suppose we were required to pack only in 8-ounce units.

As you look at these, the contents of each transparent package is exactly 8 ounces. You can see that, if standardization rules required that each package of each variety weigh exactly 8 ounces, additional package sizes would be needed.

With new package sizes required to pack each of these 15 varieties to 8 ounces, we would be sacrificing the benefits of mass production. Each new size at any one oven would require its own separate line of packaging equipment to handle it. Just one such new packaging line requires an investment in plant and equipment of almost \$400,000 and a building area of approximately 4,800 square feet.

I asked our production people for a preliminary estimate of the number of new packaging lines we would need based on our present bakery schedules. I think their estimate will surprise you. It was 27.

Let us assume we could rearrange bakery schedules even though shipping costs would be increased. Maybe it would be possible to cut that number in half to 13 new packaging lines. At \$400,000 each that is more than \$5 million and I am not sure we might not need more land as well, or bigger buildings.

If we were to make that investment, what would happen to our costs? They would go way up. If we then averaged four packaging lines per oven, only 25 percent of our investment in packing equipment and the plant required to house it would be productive at any one time. Even if only one additional line were required for some particular oven, it would be idle half the time.

Because of the time involved in shifting from one line to another, our efficiency would be further decreased by additional start-up and shut-down expense. Our overhead would increase because we would have to pay additional real and personal property taxes, insurance and maintenance costs, and the other expenses that would flow from this additional investment.

All of these added costs would have to be reflected in higher prices. If consumers refused to pay these higher prices, we could not continue to make these products. The variety of products available to consumers would thus be reduced. Freedom of consumer choice would be curtailed.

Elsewhere in the proposed legislation is a restraint on the administrators which, oddly enough, creates more inequities. No regulation may establish any weight less than 2 ounces. We are told that the purpose of this is to permit free variation of weight by manufacturers of very small packaged foods sold through vending machines. Because the price to consumers must be maintained at an even 10 cents, only by varying the weight offered can increased ingredient cost be overcome.

But let us see what happens under such a provision. Here are the five leaders in the line of merchandise Nabisco offers to vending machine operators. Three of these are under 2 ounces and so would be exempt. But there is one marked 2 ounces and this favorite, Fig Newtons Cakes, is  $2\frac{1}{4}$  ounces. Are some of these to be controlled, while others are exempt?

Raising the exemption would do no good. The same problem would remain at any level. Our marketing people are now receiving requests for 15-cent vending machine items. Naturally weights will increase and the same inequities persist. When demand for 25-cent items comes—and it will—weights will increase again and the whole problem would repeat at higher levels. How does the consumer bene-

fit from Government regulation of some vending machine items while others are exempt?

H.R. 15440 also delegates to administrators authority to make rulings on the shapes and dimensions of packages. Rulings in this area could also prove costly and deprive consumers of features they prefer, such as the inner units we call Stack Packs.

Stack Packs are inner packs of rows of single crackers. Several of these may be placed in a single package. The consumer may then open one inner pack while the remainder keep their contents fresh for days or even weeks. Stack Packs were first introduced in 1952, and they have proved exceedingly popular. We have gradually extended this unitized packaging to a number of our better selling varieties.

Stack Pack machinery is enormously complicated and expensive. Its development in our engineering laboratory took several years and cost a great deal of money. Improvement research goes on constantly. One such unit, which can work for only one oven, represents a massive investment. Once set, it functions at high speed, but changes and adjustment in the size and contents of the individual Stack Packs would be costly, difficult, and very impractical. The entire packaging line would have to be rebuilt. Both it and the oven it services would have to be shut down while this was being accomplished.

Our competitors have their own types of inner packs. Some package single crackers like our own. Others make unit packs of blocks of two, four, or even six crackers. In each case, a costly, highly specialized piece of machinery is involved.

And consumers say the inner pack is quite important. Housewives are keenly interested in the added product protection and convenience it offers them. And it is, of course, another area in which we competing manufacturers try to please these American housewives and so win their continued patronage for our brands. Let me show you how this works in the largest-selling type of crackers—soda crackers or saltines as they are better known today.

Here are the 2-pound packages of the four leading brands of saltines in the United States. Not all of them are available everywhere but at least three compete in most sections of the country. Please note that all display "2 pounds" in very large type, although package shapes vary.

The difference in outside dimension is less significant than the variations in the inner units. First let me point out our Premium Saltine Crackers. We pack single crackers in a one-quarter pound stack—what I referred to earlier as our Stack Pack. And eight of these are packed parallel to make up 2 pounds.

Next Zesta Saltines—made by Keebler Co., formerly known as United Biscuit. Here we find pairs of crackers packed in one-eighth pound units. Sixteen of these make up their 2 pounds.

Now we have Krispy Crackers made by Sunshine Biscuit. Inside we find blocks of six crackers, packed in half pounds so that four packs make up their 2 pounds.

Finally, we come to Flavor-Kist Saltines baked by Schulze-Burch of Chicago. Inside there are blocks of four crackers, wrapped into quarter-pound units so that eight units make up 2 pounds.

The four leaders are also different in ingredients or proportions of ingredients or both and they also vary somewhat in thickness. But the big distinction lies in their packaging.

Now we have done our best over a number of years to persuade American housewives that our single cracker stacking is preferable. But a great many still prefer Krispy's, or Zesta's or Flavor-Kist's method. No matter how we try to persuade, they cling to twin-crackers, or blocks of four or of six—thus exercising their freedom of choice.

Will the regular users of any one of these brands take kindly to a Government ruling that their favorite pack must be abandoned and replaced by standardized substitute?

We know they will not. If we are adversely affected, we know they will protest to us in person, in the store, and by mail.

And we or our competitors—or perhaps all of us, depending on the exact ruling—would have to incur added investment, meaning higher costs, in order to remain within the law.

Let me stress that any requirement or ruling that sets standards causing structural packaging changes in crackers—any or all of them—will lead to price increases. For manufacturers higher costs will have to be passed along. Consumer prices will rise and consumer choice will be restricted as consumer favorites are abandoned. I do not see how the consumer can benefit.

There is another aspect of standardization that troubles me. This is its impact on packaging research and development. Some of the recent improvements in packaging have been shown today, and our supermarkets are full of others. All of them are a tribute to America's system of free competitive enterprise.

Doesn't standardization of any kind inhibit invention? Who will strive to find a more convenient package if Government edict may prevent its use? Who will finance exploration work in the laboratory if standards cannot be changed—or if there is even uncertainty about changing them? Must housewives forever buy existing packages because no manufacturer may legally offer a new one except with the Government's concurrence? These things disturb me because America has progressed by the development and risk taking of new ideas and new ventures—not by mandatory clinging to the old. I worry lest this standardization result in freezing yesterday for our children to live in tomorrow.

To serve Nabisco and its operating divisions in the United States, more than 150 Nabisco people spend full or part time on package improvement and development. In laboratory and consumer research, in design or machinery development, they are backed up by thousands more employed by our many suppliers. And we are only one company—the same tale can be told by scores or hundreds of others. How will standardization affect all this effort?

I am not just philosophizing. This is real concern. Let me give you some real problems in innovation we see under standardization. New products are most important to the continued growth and progress not only of manufacturers, but to the American economy as a whole. In our product lines this means new items for the housewife.

For example, we have a famous hot cereal—Cream of Wheat. Nabisco is also famous for graham crackers. We know that mothers value

highly the nutritional merits of graham flour. We knew that there had never been a graham cereal. Our people worked hard to develop such a product—tasty, nutritious, easy to prepare. When we had the product we had to package it. Ready at hand was the machinery used to pack 14 ounces of Cream of Wheat—this package here. Now the new graham cereal differs in density—only 11 ounces fills the same volume. But we were free to move quickly and save money by utilizing existing equipment.

Here is "Hi Graham" as we are now marketing it. The package is marked "11 ounces." So far consumers seem to like this new product. They are buying it regularly.

But suppose we were required to pack hot cereal products in units weighing 14 ounces only. This could well become a "standard" under H.R. 15440. We would have had to invest more than \$200,000 for new equipment, just to test a new product in a few cities. Such a sum—added to other inescapable development expenditures—would increase costs which prices must recover. We might well have been discouraged from the whole venture. What benefit would this be to housewives?

As another example, let me mention "aerosol" packaging. Only a few years ago such spray cans did not exist. When they became available, new products, like hair sprays, were invented—and believe me, consumers like them.

Makers of other lines adapted their products to aerosol requirements. Paint is a notable example. And, believe it or not, cheese is another. Here is our "Snack-Mate" cheese spread. We now have six different flavors and more are being developed. Housewives like them. Even children can spread crackers without messing up the kitchen. Party guests like the "do it yourself" idea as well.

But how could we have done this under "standardized" packaging? As one of the pioneers, we found few precedents. Everything had to be developed from scratch. How much product we could pack depended on the can size available in sufficient quantity, and the consistency required by the dispensing method. These cans are the size we could count on receiving in large numbers and it turned out that they accommodated  $4\frac{3}{4}$  ounces by weight. They are so marked. Could we have obtained Government's blessing? How long would that have taken? And wouldn't our competitors have been forewarned? Or, and I think it more likely—would such an innovation be blocked because it didn't conform to previously existing packaging standards?

Since legislation of this nature was first proposed, it has consistently referred to "any consumer commodity." I am sure that the proponents believe that this can be determined and defined. However, when we have inquired what the phrase means, we have not received any clear-cut response. We have not been told, for example, whether this means that all crackers are a commodity, or all cereals are a commodity. We do not know if this means that soda crackers are one commodity and graham crackers are another commodity—and how about these snack crackers which I have demonstrated here today? Are they all the same or is each flavor a separate commodity? Obviously, unless "any consumer commodity" is clearly defined, only confusion and uncertainty can result.

But, I don't believe anyone can satisfactorily define a consumer commodity. We are now introducing a new product all over the

United States. It is now being distributed to grocery stores and you will soon see it advertised on television and in magazines. A similar product has been successfully marketed for several years by our Canadian affiliate.

Here it is. As you can see its name is "Doo Dads" and it is further described on the face of the package as "Five munchables in a savory mix." The generic word we have given it is "snacks." I do not know whether proponents of this legislation would consider snacks as a consumer commodity. But what "consumer commodity" would they consider it?" Let me read the opening sentence of the ingredient statement. "Contains wheat and rice cereals, cheese crackers, pretzel sticks and salted peanuts."

What kind of a consumer commodity is that?

As revised, the legislation provides a procedure for the establishment of standards. This, they say, will guard against unwise and damaging administrative rulings. I will leave it to others to testify from a legal and constitutional viewpoint. However, I would like to make two comments as a businessman.

First, it will be impossible for administrators to make rulings which will not discriminate and harm some. Most often, those damaged will be the smaller businessmen. Those trying to offer something more, something new, something different than their larger, more affluent competitors.

Second, the procedure will be expensive. The Government's role will cost the taxpayers more, and we are all taxpayers. As for business, I see unending expense is preparing testimony, presenting witnesses, retaining counsel.

Let me remind you again, increases in cost mean increases in prices. The consumer will have to pay more for the doubtful privilege of having her selection reduced, her choice restricted. She will pay more for less choice. That is why I have referred to this proposed legislation as the "low choice-high cost packaging bill."

As a result of the problems I have laid before you today and careful consideration of all the views expressed over the last 5 years, I have come to the conclusion that it is impossible to write a bill which is fair and equitable to the many different business interests involved. I do not think it is possible for legislation to cover wisely all of the many problems involved in packaging and labeling the range of merchandise which is offered for sale in the United States today. Inequities would be inevitable and no matter how wise the administration of the legislation, inequities in rulings would necessarily result. Any bill restricting consumer choice and severely limiting packaging, both existing and future, will do the consumer more harm than good.

This brings me again to the conflict of philosophy between the proponents of this legislation and the business community—the conflict between consumer choice and standardized commodities, between freedom of the marketplace and authoritarian controls, between innovative progress and regulated stagnation.

On only one point do the two sides agree—that the consumer should be well informed. She is entitled to all essential information so that she may make informed buying decisions freely as she sees fit to meet the needs and preferences of her family.

We think existing law now requires this kind of information on food packages. We have repeatedly urged that existing law be fully enforced, increasing the budgets and personnel of the administrative agencies if that is necessary.

Proponents of this legislation maintain that more information is needed but they do not specify what it is. Instead they would grant power to administrators to issue rulings—all kinds of rulings—"to prevent the deception of consumers or to facilitate price comparisons." These rulings may include standards of weight, measure, or count, standards of packaging design and construction and standards of labeling. Such standards are not necessary to provide the consumer with information. In any field, standards are set for purpose of control, not for information.

Consumer information is the issue, gentlemen.

Do our packages inform the consumer or do they not?

We are sure they do.

Thank you very much.

Mr. MACDONALD. Thank you very much for a very fine statement.

I know you are a very busy man, but the Chair has been asked if it would be possible for you to return in the morning to answer questions of the committee.

Mr. SCHROETER. I am at your command. I will be here.

Mr. MACDONALD. If you can, we are looking forward to talking to you tomorrow.

The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 12:37 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 3, 1966.)



## FAIR PACKAGING AND LABELING

---

WEDNESDAY, AUGUST 3, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Yesterday, when the committee stopped, Mr. Harry Schroeter was testifying. The gentlemen who wanted to ask you questions are not here. So, if you can stand by for a while we are going to take the next witness and then put you back on the stand.

Mr. SCHROETER. That is quite all right, Mr. Chairman. We have had the exhibits set up. Will they interfere?

The CHAIRMAN. We will see that they don't interfere. Is Mr. Milan Smith here, executive vice president of the National Canners Association?

Mr. SMITH. Yes.

The CHAIRMAN. Could you proceed now? If you would, we would appreciate it if you would start now. Mr. Schroeter, we will get back to you for the questions.

Mr. SMITH. We also have some exhibits here.

The CHAIRMAN. If you care to leave them there you might. I would like to say if you have a long statement, you can put it in the record and summarize it. We would appreciate it. You may proceed.

### STATEMENT OF MILAN D. SMITH, EXECUTIVE VICE PRESIDENT, NATIONAL CANNERS ASSOCIATION

Mr. SMITH. My name is Milan D. Smith. I am executive vice president of the National Canners Association, whose 585 members, with canneries in 44 States, pack approximately 85 percent of the national production of canned fruits, juices, vegetables, meats, seafoods, and specialties.

We very much appreciate this opportunity to appear before you to present our industry's view on this legislation.

My appearance today will be the fourth time in four and a half years that I have testified before a congressional committee on packaging and labeling. In February of 1962 I was privileged to appear before the Senate Antitrust and Monopoly Subcommittee to describe the voluntary packaging and labeling programs of this association and its members. At that time Senator Hart commended the pro-

grams of the canning industry that serve the consumer and complimented our efforts in the development of those programs by the National Canners Association.

In March of 1963, I again testified before that same subcommittee, to explain why the canning industry was opposed to additional packaging and labeling legislation. Once again Senator Hart was kind enough to comment favorably on the efforts of our industry, stating that:

We do feel that the canning industry has been and continues to try to do an effective job in this area, it would be my impression, in a measure more seriously than most other segments of the economy.

In addition, Senator Ribicoff, one of the cosponsors of S. 985, commented as follows:

As a matter of fact, voluntary activity on the part of industry to guard against deceptive packaging has existed for a long time. The canning industry, to name but one, is a good example of an industry acting through a strong national association to help assure generally good industrywide packaging and labeling practices.

Many other proponents of the bill have been complimentary to our industry and what it has done with its voluntary programs.

As the committee is by now aware, the bill before you differs in a number of respects from S. 985 as first introduced and as considered at the Senate committee which this bill—as passed by the Senate—would, if enacted by Congress, have upon the canning industry and why we firmly believe that it is unnecessary and burdensome, duplicates existing law in many respects, will measurably increase costs to the consumer, and the other respects its provisions are impracticable for application to the canning industry.

In appearing here today on behalf of the canning industry, I am confident that this committee is not unaware of the economic importance of canned foods. Of the total grocery food products covered by the bill, canned foods account for \$4.6 billion at wholesale value, or almost 20 percent of all of the food commodities to which this bill will apply.

We share with the proponents of S. 985 an abiding concern for the interests of the consumer. That concern has been responsible for the voluntary programs we have developed over the years, including the descriptive labeling program which was initiated in 1934, and the simplification of containers program which was begun in 1925. Both of these programs have been continually updated and revised in the intervening period to be sure that they were current and of maximum helpfulness to the buyers of our industry's products, and even at this hour the simplification of container program is being reviewed and the latest descriptive labeling manual, fifth edition, was published in March this year.

The basic understanding that what truly served the consumer, best served the canning industry, has been a guiding principle over the years.

Such a basic guideline also has helped in our dealings with the Federal Government and particularly with Congress. It was the basis for our endorsement of the 1906 food and drug law and our support of the 1938 revision. It underlay the sponsorship by the canning industry of

the McNary-Mapes amendment in 1930 to the original Food and Drug Act to provide for the first time standards of identity and fill of container, and minimum standards of quality, for canned foods. It has motivated the expensive efforts of this industry in developing with the FDA the many standards which have been promulgated for canned foods under the comprehensive procedural provisions of the 1938 Act.

Having in mind these basic principles of consumer interest the canning industry, along with other segments of the food industry, expresses its opposition to the need for this proposed packaging and labeling legislation. With your permission, I should like briefly to summarize our principal objections which combine to support our conviction that S. 985 is unnecessary. It will not serve the best interest of the consumer; in all likelihood it will increase the prices she must pay for the food items covered by the bill, and does threaten to disrupt voluntary programs developed over decades of effective industry effort, and could well greatly retard further improvement and development of the products of our industry.

In the first place, there is no real evidence that it is necessary in the case of canned foods to grant this vast new authority for expanded and rigidly detailed regulations.

The voluntary canning industry programs outlined in detail in our 1962 testimony have provided an effective framework for the packaging and labeling of canned foods that places cardinal emphasis on informing consumers as to the nature and quantity of the product.

Our second objection to the bill is that existing laws are adequate to control any abuses that may arise. To say that enforcing of these adequate, existing laws is handicapped by proceeding on a case-by-case basis is, we believe, in itself a misrepresentation.

As to all foods, there is in the Food and Drug Act existing authority for the establishment of detailed standards of identity, standards of quality, and standards of fill of container. As we developed in our earlier testimony, there are a great many canned foods already standardized on the basis of proposals made by the canning industry, including virtually all commercially significant canned fruits and vegetables, canned seafoods, and a number of others.

Indeed, under the Hale amendment, an industry bill which this committee reported and recommended in 1953, the current procedure is for the industry voluntarily to submit to the FDA any proposals and amendments on all FDA standards, and after discussion and consultation these are published. If there is objection on any particular point, the FDA statute provides for its prompt determination of the limited issue under reasonable procedural safeguards, in a public hearing from which there are developed findings based on the particular facts.

I am confident that the committee in the light of its jurisdiction over the Food, Drug, and Cosmetic Act, is familiar with the scope of these FDA standards of identity and fill of container. On the basis of our own experience, we know that with respect to the standardized composition included in a standards of identity and the correct label name set forth in that standard of identity, the existing laws are adequate and effective.

As to other areas of label control—such as the prohibition of any false or misleading label statement, the prohibition of deceptive con-

tainers, and the requirement of prominence in the label statement—the present FDA law is pointed, adequate, and enforceable.

Our third basic objection to the bill is that S. 985 would mark a distinct departure from existing Federal packaging and labeling controls, in that for the first time the Government would be authorized to prohibit practices that are not deceptive or misleading, and to impose requirements that go beyond the prevention of deception. The agency could adopt these additional regulations if it determined that they were necessary either to prevent deception, or to facilitate price comparisons as to any consumer commodity. Packaging controls would be adopted solely on an administrative finding that a commodity is being distributed for retail sale in weights or quantities that are likely to impair the ability of consumers to make price per unit comparisons.

No showing of deception would be necessary. The agency could adopt a regulation specifying the size of packages, requiring ingredient information, or designating package-size descriptions solely on the basis of a determination by an administrative officer that such a regulation might facilitate price comparisons of products.

In its overall consideration of the unprecedented and sweeping provisions of S. 985, this committee must not only satisfy itself that there is real need to delegate to these administrative agencies these wide powers to regulate in detail the bases for consumer selection of one food product over another. The committee must also determine whether there is any assurance that these governmental determinations will be superior to the judgments of the consumer, whose vote of confidence guides the businessman, who must satisfy her or lose out in the competitive race. We in the canning industry, on the basis of our performance in product development, abundant production, and the maintenance over decades of one of the best if not the best value in the consumer's market basket, are convinced that such administrative judgments will not effectively serve consumers.

Let me now turn to S. 985 and discuss its provisions in relation to existing law and realistic canning operations.

Under section 4(a)(1), the FDA could adopt a regulation to require that the label specify the identity of the commodity and the name and place of business of the manufacturer, packer or distributor.

The Food, Drug, and Cosmetic Act now provides that labels must bear the common or usual name of the food, and the name and place of business of the manufacturer, packer or distributor.

Quite frankly, we are totally at a loss to understand the basis for this legislative duplication. We can think of no reasonable explanation of why the Congress of the United States should enact—or even consider—a provision of law that does no more than restate existing law.

As to section 4(a)(2), the FDA would be directed to adopt regulations requiring that the net quantity of the contents be stated in a uniform location upon the principal display panel of the package. Early in our efforts to improve the labeling of canned foods, beginning more than four decades ago, the canning industry faced the practical problem of determining what would be the front panel of the cylindrical can as it might appear on the retail shelf. In the voluntary programs

begun many years ago to which I referred previously, we developed, with the endorsement of the FDA, as part of our descriptive labeling program the industry practice of placing the net weight, together with all other required or recommended consumer information, on an appropriate "information panel." This appeared immediately to the right of the trademark and the principal vignette on the label. That practice has served the consumer well over these many years; she became accustomed to the information panel; and we have had no consumer complaints about net weight placement on canned foods.

However, in an effort to meet new requirements in this area adopted by some States and simultaneously to provide consumers in all States with a second net weight statement for whatever value it may have to her, many canners for years placed the net weight declaration both on the information panel and on the principal display panel. In fact, the National Canners Association, several years ago recommended to all canners that after they exhausted their then supplies of existing labels, the net weight statements ought to be placed on the principal display panel.

Moreover, the present Food, Drug, and Cosmetic Act and regulations provide that misbranding will occur whenever any required information, including net weight, fails to "appear on the part or panel of the label which is presented or displayed under customary conditions of purchase."

With respect to canned foods, both our originally developed placement on the information panel and our later recommendation as to net weight are accepted by the FDA to be in full compliance.

Consequently, the front panel requirement of section 4(a)(2) of the Hart bill would do nothing more than restate present canning industry practices, and duplicate the requirements of both the FDA and most State laws. No plainer lack of need or case of statutory duplication could be suggested.

The added requirement in this section that net contents be declared "in a uniform location" on the front panel could add substantial additional costs by requiring redesigning of a high percentage of the grocery product labels. It would appear that as long as the net contents are clearly and conspicuously stated anywhere on the front panel that this would serve the purpose and would avoid injecting the Federal Government into the control of label design which we feel would be unwarranted and unnecessary.

Another new labeling requirement would be imposed by section 4(a)(3)(A), under which the net contents for most consumer packages would have to be expressed in terms of ounces, rather than pounds and ounces, or quarts and ounces. The assumption is that consumers do not know how many ounces are in a pound, pint or quart. Although this approach may facilitate package-size comparisons, it must be recognized that it is an abrupt repudiation of longstanding requirements under State and Federal law.

Section 4(a)(3)(B) and (C) of the bill would require that the quantity declaration "appear in conspicuous and easily legible type in distinct contrast \* \* \* with other matter on the package," and in a type size established by FDA regulation. The existing law explicitly provides that every word, statement, or other information "re-

quired \* \* \* to appear in the label or labeling" must be "placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."

An FDA regulation provides that one basis for a violation of this provision would be the "smallness or size of type in which" required information appears on the label.

Within the past few years a number of States have adopted a type-size scale for the quantity declaration on the labels of consumer commodities, in accordance with the recommendation of the National Conference on Weights and Measures, and endorsed by the National Canners Association.

Canned food labels have no difficulty complying with these type-size requirements. But we see no valid basis for the promulgation of a Federal type-size scale, which at best would do nothing more than duplicate existing requirements already adopted in a great many States, and at worst could impose different and varying size requirements that would lead to untold confusion and needless costs. Here, again, there is no need and obvious duplication.

Section 4(b) of S. 985, prohibiting all qualifying words or phrases added to the quantity declaration, relates to alleged problems which do not exist with canned foods. However, even if this were to be a problem of canned foods, the present Food and Drug Act specifies that a food is misbranded and subject to seizure, "if its labeling is false or misleading in any particular." We submit that this provision of existing law is entirely adequate and that consumers would derive no additional benefit from regulations that prescribe precisely what may or may not be said on every food label.

It is true, of course, that section 5(b) recognizes that there may be exceptions to these prescriptions. But this turns on very vague phrases, such as "the nature, form, or quantity," of particular products or "for other good and sufficient reasons."

It is impossible to apply these ideas to canned foods. But more important, this ambiguous provision is equivalent to giving the administrative official completely unfettered authority to determine whether or not to apply the mandatory provisions of the bill to particular foods or classes of foods.

Turning to the second group of authorized additional regulations in section 5, on a product-by-product basis, we find that these are even more alarming in their implications for our industry and for the American consumer. These provisions would in large part take the most fundamental packaging and labeling decisions out of the hands of the manufacturer, and turn them over to the Federal official, whose sole basis for making these decisions would be his judgment of what is desirable to "facilitate price comparisons."

These additional regulations would be authorized without a finding of deception. They can be justified only by a conclusion official is better able than the ultimate consumer to make her everyday shopping decisions.

Regulations under section 5(c) (1) to establish size designations for packages would have little, if any, application to canned foods. Some

cans may not indicate the can size, such as No. 303 or No. 21½, on the label, but this is intended solely as a convenience to housewives who may be using a recipe that specifies a certain size can.

At any rate, this provision would appear to be based on a misconception—that size designations, such as “medium,” “family size,” or “giant,” are used by consumers as a means of comparing prices for competing products. These terms are used by a manufacturer as a convenient means of distinguishing among his various sizes of the same product.

Every shopper knows that price and quantity comparisons between competing products should be based on the net contents declaration. There is thus no justification whatever for the Federal Government to concern itself with supplemental size designations.

As to section 5(c) (2), we can see no need for mandatory regulations establishing how much of a commodity shall constitute a “serving.” Our association recognizes that many consumers appreciate an indication of the approximate number of servings provided by a particular package. This we have done as a helpful guideline, but we know also that any attempt to define servings by law cannot possibly take into account all of the widely varying appetites, tastes, dietary preferences, and circumstances that dictate how much of a food may be served and eaten at any one time.

The development and use of label information relating to servings per can or jar, or in terms of cups, is not designed to provide consumers with a method of comparing prices at the time of purchase, but as an aid to the housewife in preparing her meals.

They are generally comparable to the type of serving recommendations which are found in cookbook recipes. Government dictation of serving sizes for label declaration would appear to be a wholly futile exercise that might lead to the false assumption that products should be compared and purchased on the basis of a serving size declaration, or that the Government has determined that consumers should use no more or less than the specified serving; this would create misunderstanding and confusion where we feel little if any now exists.

We do not believe that consumers would be benefited by the regulation in section 5(c) (3) of so-called cents-off or economy size label statements. The abundant packs of the canning industry are offered for sale at different prices in various retail outlets in various localities depending upon freight and the type of retail store.

Although the cents-off promotion has not been a common practice in the canning industry, there may be occasions in which a canner who wants to move a surplus block of merchandise will reduce his price to the wholesaler or retailer. Whether this practice has been used or not, it can be successfully argued in our industry and outside that it is the one way the processor has of flagging the consumer that he is providing the retailer an allowance on merchandise which he, the processor, intends be passed on to her. Bear in mind that in this type of promotion the housewife would not necessarily know that any such allowance was being made. Thus there are many who urge that printing the price reduction on the label helps to insure that the lower price thus given will be passed on to the consumer by the retailer and the promotional ends sought will be achieved.

Here again, both the FDA and FTC presently have adequate authority to control any type of promotional labeling that is deceptive or unfair or false or misleading. This broad grant of additional power, to "regulate" cents-off labeling on commodity basis, serves no purpose other than to encourage unnecessary Federal control over a popular promotional device, when there is no evidence of consumer deception and with likely losses to the consumer.

As to further regulations in the case of foods to require ingredient information, authorized in section 5(c) (4), this is either a plain duplication of existing law, or an unwarranted extension of present requirements. On unstandardized foods, the present law specifically requires that "the common or usual name of each such ingredient" be designated on the label, and that these be set forth conspicuously.

But the authority granted by this section of the bill could be interpreted by a regulatory official to authorize him to require that something more than the names of the ingredients be declared on the label. It is impossible to predict at this time just what might be attempted under such a broad grant of authority. It would appear to us to be a blank check.

The provisions in the bill that have undoubtedly given rise to the greatest concern on the part of grocery product manufacturers are those in section 5 (d) through (g) authorizing the adoption of regulations to establish weights or quantities in which a commodity must be packed for retail sale. Senator Hart's original three-line provision has been modified and complicated apparently in an effort to meet the many valid objections to compulsory packaging standardization.

The Senate bill adds an exception for packages under 2 ounces, a qualified exception for packages used for related commodities of varying densities, a "grandfather" clause for returnable glass containers in use on the effective date, an additional hearing for the determination of the need for a regulation, a requirement that the FDA give due regard to a variety of factors relating to package size, and an opportunity to obtain a "voluntary" product standard that may be made compulsory by the FDA. But what the proponents do not seem to realize is that each one of these exceptions and modifications in effect recognizes the validity of the objections to compulsory packaging standardization without adequately meeting them.

For a number of reasons such standards make no commercial or practical sense for packages under 2 ounces. But many of these same reasons apply equally to packages over 2 ounces.

Establishing package sizes that preclude the use of the same container for products of varying densities is obviously not in the consumer's interest, as we documented at some length in our testimony before the Senate committees. But this conclusion is just as valid whether or not some Government official decides several years from now that the resulting fractional ounces are likely to deceive consumers because they make price comparisons difficult, and whether or not a particular container has been "customarily used" for this purpose in the past. These same considerations apply to new products and new containers, and the new uses for old containers.

Certainly returnable glass containers in use on the effective date should be protected, but so too should nonreturnable glass containers,



metal, paperboard, plastic, and foil containers by authorizing unreasonable restrictions on them that may not be applied to containers in use on the effective date?

The National Canners Association would be the last to question the benefits for consumers, manufacturers, and distributors that may be obtained for some industries from a purely voluntary simplified practice recommendation, for major segments of the canning industry have operated under such a program for over 40 years. But S. 985 would largely destroy the benefits obtained from a voluntary approach to container simplification. If such a program is to be beneficial for manufacturers, distributors, and consumers, it must have sufficient flexibility to enable packers to develop and try out new container sizes that meet shifting consumer tastes and demands.

Compulsory regulations, specifying the weights in which commodities must be packed, would make it extremely difficult, if not impossible, to make desirable container changes.

At the present time we enjoy the benefits of voluntary container simplification, but we have the flexibility and freedom of choice—for manufacturers and consumers—that are so important in a competitive, changing market situation.

The "voluntary" standards referred to in S. 985 would remain voluntary only until the FDA adopted an identical regulation which would then become compulsory.

At that point, the benefits of a flexible standard would be lost—and a manufacturer would be forced to go to two Government agencies if any change in package size was deemed to be desirable.

And finally, if Congress itself gives "due regard," as the bill suggests, to the factors it directs the FDA and FTC to consider in section 5(g) in promulgating container regulations, the only possible conclusion would be that compulsory packaging standards cannot be justified on any rational basis. These are the very factors that make any such standards wholly contrary to the public interest:

Cost of the packaging and cost to consumers;

The need for a reasonable range—which necessarily means a changing range of package sizes;

The use of wide, and constantly developing, variety of materials;

Customary use of various package sizes; and

Competition between containers made of different types of packaging material.

S. 985 as enacted by the Senate did not authorize regulations to prevent the distribution of commodities in packages of sizes, shapes, or dimensions which are likely to deceive retail purchasers as to the quantity of the contents. But such a provision is included in H.R. 15440, and I wish to comment on it briefly.

Existing law now provides that a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading. In addition, it authorizes the promulgation of regulations fixing and establishing for any food reasonable standards of fill of containers. Such standards have been adopted and in effect for many years for the major canned foods.

In our view, these provisions of the present law are adequate to prevent the sale of foods in deceptive containers. It is possible that

the language in H.R. 15440 could be interpreted to authorize the FDA to prohibit the sale of particular commodities in all containers other than those specifically approved in a regulation.

We strongly believe that the only satisfactory approach to container standardization—as proved in the canning industry—is the formulation of truly voluntary recommendations. Container simplification, in this fashion, has obvious advantages to consumers and to the industry, and for that very reason voluntary industry programs in this area have proved to be highly successful.

Our industry experiences over the past decades have made us cognizant of a great many technological problems which I shall not elaborate. The fill of a canned food container and the specification of net weight for some commodities can most informatively be specified in terms of fluid ounces, or the water capacity of the can. For other commodities, it is best developed against what is called the drained weight. In still others the canning industry, in collaboration with FDA, has developed formulas for relating what is called pressed weight to input. We have done all of this under the provisions of the existing FDA Act. There is no need whatever for additional regulatory authorization.

Compulsory standardization would therefore unnecessarily inhibit the competitive development of improved container sizes, shapes, and materials that provide significant consumer benefits and permit the rapid adjustment to changing trends in consumer tastes and preferences in various parts of the country, changes in diet, as well as to family sizes. We cannot conceive of a compulsory standardization program that could on the one hand satisfactorily reconcile the complicated and interrelated factors bearing on container size and shape, and on the other hand permit the necessary degree of flexibility and change.

Mr. Chairman, we in the canning industry share with you the basic objective of fulfilling the consumer interest in informative labeling and protecting the consumer against deception.

Indeed, since 1952 we have distributed over 14,400,000 leaflets explaining our descriptive labeling program to housewives, schools, youth groups, adult education programs, and the like. An additional 10,100,000 leaflets devoted in part to labeling have been distributed in the past 14 years to these same groups. Our labeling manual has been widely distributed since the first publication in 1940, and it is constantly revised and supplemented.

It was republished in 1942 and a revised edition issued in 1946. The present edition, the fifth, was revised and published early this year. Nearly 4,000 copies are presently being used by canners, buyers, brokers, label manufacturers, and others.

The National Canners Association has expended many hundreds of thousands of dollars in such consumer and trade educational programs.

For example, our home economics-consumer services' primary objective is to provide factual information about canned foods and their use. Educational publications which include up-to-date information on labeling, can sizes, nutritive values, and how to buy and use canned foods are sent upon request to teachers, home economists, youth groups, homemakers, adult education programs, and others.

Our distribution of this type material has exceeded 8,500,000 copies in the past 14 years. The division also provides factual information to newspapers and magazine food editors, radio and television programs, and to authors of articles, books, and textbooks. And since its release in September 1962, an estimated 18 million people have seen "Behind the Label," the association's consumer film on canned food labeling.

Statements about quantities of publications distributed (such as the over 3 million distributed in the last 14 years) present only the initial distribution. Many of the publications are passed along to others or shared in school classes. Teachers report that most of the publications supplied for class distribution and used in schools are then taken home to parents. Thus the scope of influence of the NCA canned food information program goes far beyond the number of publications distributed.

We oppose S. 985 because we are convinced that it will not give the consumer any benefits not already provided by existing law. As to any misleading or deceptive element in packaging or labeling, the present laws are adequate. As to the further wide delegation of authority to administrative agencies to control and limit the quantity or weight in which any food may be packed, we believe that the proposed legislation is unnecessary, and in many respects impracticable, and will impede the development of new and the improvement of existing products.

I have been very pleased, Mr. Chairman, as I have listened over the past few days to testimony given here, with the very excellent and thought-provoking questions that have been asked, and with the apparent desire of this committee to ferret out the basic facts and to use these in your judgment. I have appreciated this opportunity to present these statements, which you have noted.

I am available to endeavor to answer any questions which you may have which would have bearing on your ultimate determination. Thank you.

The CHAIRMAN. Thank you so much for taking the time to come here to give us the benefit of your views. I want to apologize to you and to the other witnesses for the time you have had to spend waiting. However, in view of the legislative situation we cannot sit in the afternoon. This is an important bill, as you know. We are trying to do our very best with it. I heard you say something about compulsory standardization of packaging. You know that the bill calls for a formal hearing before anything takes place. It says—

\* \* \* whenever the promulgating authority determines after a hearing conducted in compliance with Section seven.

In these hearings the interested parties can bring their own people and there can be cross-examination of all witnesses, and so forth. This is not a case of somebody just saying, "You shall do this." Then even after that, there are 60 days after the determination has been printed in the Federal Register they can initiate voluntary proceedings aiming at industrywide standards. Anyone who thinks they are being unfairly treated certainly has very adequate protection, it seems to me.

Mr. SMITH. If, in response to your comment, I could quote here a paragraph or two, it would serve to elaborate on my earlier point.

Sections 5 (d) (f) and (g) set up what we feel is a complicated procedure for the adoption of regulations to establish weights and quantities in which a product must be packed.

The dangers of this type of control we believe have been documented in previous hearings. The procedure for obtaining voluntary standards in cooperation with the Department of Commerce set out in section 5(e) is in no real sense a limitation on the enforcement agencies' authority. Under Commerce Department regulations, the consumers or users, the distributors, and manufacturers, et cetera, would be represented on the committee responsible for recommending promulgation of a standard, and no standards could go forward that were unacceptable to three-fourths of this committee selected by the Department.

Further, the Department would publish the standard agreed to by the committee, only if the Department wished to do so. Therefore, either the Department or one-fourth of its committee could block the publication of a package standard. The industry may well be helpless, we feel, in getting a voluntary standard issued. This result well could be deliberate in a particular situation, forcing the adoption of a compulsory standard by the FDA or the FTC, regardless of the willingness of business to cooperate in the voluntary approach.

But I might go further, Mr. Chairman, and say that even if a voluntary standard were devised with the Commerce Department the FDA or the FTC would then still be free, as we understand the bill, to adopt compulsory regulations that did not vary from the voluntary standard.

In other words, this, we feel, would make something of a mockery of the standard as a voluntary measure, because any deviation from the so-called voluntary standard would then violate either FTC or FDA regulation. Amendment of the standard, for instance, to accommodate a new package, could be achieved only after a time-consuming procedure, first before Commerce and then before the FDA or the FTC.

So, the flexibility of the present voluntary approach would be totally lost. Industry would have to satisfy two agencies plus a broad committee established by the Commerce Department. We believe that the delay, the redtape, the complexity of this procedure, would make it, not only unrealistic and unworkable; it could be termed total misrepresentation, since the word "voluntary" could, in fact, Mr. Chairman, we believe, mean compulsory.

The CHAIRMAN. Well, I don't necessarily agree with that, Mr. Smith, because I think the language as set out in the bill is pretty plain. It says that hearings shall be conducted—

in compliance with section 7 of the Administrative Procedure Act.

And everybody gets a chance to come in and to cross-examine witnesses. Then determination is published in the Federal Register and they can say: "We want to try to agree on voluntary standards." and then the industry sits in and helps to make the standards. And if regulations are issued and if they say: "We have been injured." then under the procedures they can actually take it to court.

I think that every protection has been given. It is a procedure where different groups are trying to cooperate. There is nothing being put off on the industry here. Everything written into this bill

is to safeguard industry in every way, and to say that they can work out something that will be agreeable with them.

Mr. SMITH. We certainly would compliment the committee that played a part in improving the hearing procedures thus giving industry the opportunity to be heard. My comments went to the final decision. Action on the part of the committee still does not bind the Department, you see, to adopt the standard even though three-fourths of the committee agree upon it.

As we understand it, the Department may not do so even under those circumstances.

The CHAIRMAN. I want to allay your fears right now. I couldn't think this committee will ever put out anything that doesn't comply with the pledge that we want to try and bring the consumer and industry together. You will agree, I am sure, that there are some practices that are perhaps, not deceptive, but that are sort of unreasonable in certain respects I think if you sat in on the proceedings you would say: "Let's clear this up for the benefit of the consumers of this land." I believe you would agree with that.

You can't find anything that is perfect, not even in churches. By working together, by bringing industry and consumers and the Department together, maybe we can do a little better job.

Mr. SMITH. I certainly believe we would agree that, by and large, industry has done an excellent job in serving the consumer, because after all this is how they exist and live.

The CHAIRMAN. No one disputes that.

Mr. SMITH. There is still the problem of whether a suggested cure for the very occasional abuse, which we feel could be covered adequately under existing law, may be far more serious in consequences even for the consumer in costs than you would wish or we would wish.

The CHAIRMAN. You know what brought this about as well as I do. The fact is you have these large supermarkets and everybody has to look around and help himself. If you could find a clerk and tell what you want, he would get it for you. But today many labels and packages are confusing and deceptive, and that is the only thing we are trying to get at.

We are trying to protect the industry and the consumer and I don't think a fair America would oppose a bill that would also protect industry and the manufacturer.

Mr. SMITH. The matter of pricing in the stores is out of the hands of the manufacturer. This is handled, of course, by the retailers whom I understand are excluded from the bill. I believe the retailers too, as the manufacturers are by and large endeavoring to render the best possible service to the consumers as well as their own self-interest.

The CHAIRMAN. Ninety-nine percent of them are, that is right.

Mr. SMITH. The exhibits here that you see indicate various can sizes that are primarily in use under our voluntary simplification of container procedure, ranging from the No. 10 can—for your information there is indicated the quantity or net contents—including the 46-ounce can, the 2½, the No. 2 can, the 303, the 8-ounce can, and the 6-ounce can.

Now shown on the back of each are the products for which these various container sizes are primarily used for in our industry. Again

we believe that our voluntary simplification of containers program has been a very good thing in that it has given the consumer an adequate choice, while at the same time it does not freeze the manufacturer to these specific can sizes alone, thus removing the possibility of innovation.

The CHAIRMAN. I would agree with you that you are one of the men who do a 100-percent job. You are one of the fellows who as they say, "wear a white hat," but we have a lot of them that don't in this Nation, and those are the ones, and I think that you as an American citizen would want in fairness to protect everybody if you and your industry are not hurt and we are not trying to do that, because this won't affect you.

You are doing a good job. It isn't that at all. We are trying only to afford protection to the American citizen. I have taken more than my time. I will ask Mr. Macdonald if he has any questions.

Mr. MACDONALD. Thank you, Mr. Chairman. I only have a few short questions. I was wondering if you knew the panel—we call them a panel—

Mr. SMITH. Yes.

Mr. MACDONALD. But the Secretary of Commerce, the head of the FTC, the representative of HEW, all agree, and Mrs. Petersen, of course, represents the consumer in the executive branch, all disagree flatly with you on your testimony on page 9, in which you say "As to any misleading or deceptive element in packaging or labeling, the present laws are adequate."

Now, it seems to me that these people who are in charge of enforcing these laws, that their opinion about whether the present law is adequate or not would carry a good deal of weight. It is just strange to me that you, who represent the canners, take one position, and the people who enforce the laws take a 180° different position. Now, one of you have to be wrong, and it seems to me that since they are charged with the duty of enforcing the law, they ought to know whether or not the present laws are adequate. In answer to direct questions by members of this committee, they said that the present laws were not adequate. What makes you feel the present laws are adequate?

Mr. SMITH. We have had, of course, over a long period of time the advice of counsel as well as our own daily contacts with representatives of the agencies which you mentioned. Our counsel has clearly indicated existing law does cover abuses in the areas of deception and labeling and packaging. As I understand it, it was indicated by some of these witnesses that deception was not the primary concern of this bill, that they did feel they had adequate authority. Here they are moving on to another area of controls in packaging size and content which goes beyond that framework.

Mr. MACDONALD. No, sir. If you were here you would have heard Mr. Dixon, because I asked him practically the same question that you are answering, and he said that one reason, because the law was not adequate, that violations had to be taken up on a case-by-case basis, and under the law that we are now looking at, under the House bill that we are now looking at, this defect would be remedied. And I think this probably would help you and your membership. They wouldn't have to each time, each member, go in and fight with the FTC.

Mr. SMITH. Well, on the other hand, we believe that if there were to be any abuse—I am certainly referring to deception in packaging or labeling, which law for our industry is administered by the FDA—we would think that this should be handled on a case-by-case basis for the commodity involved, rather than a broad, across-the-board approach. We believe that the merits of each case should be very carefully weighed, in order that justice might be done.

Mr. MACDONALD. Well, as a concrete example, indicating the cans that you have on display here——

Mr. SMITH. Yes.

Mr. MACDONALD. Going from 10, I think, down to 2.

Mr. SMITH. To a 6-ounce size, yes.

Mr. MACDONALD. You listed the contents of those cans by way of servings, and I have yet to hear anyone tell anybody what a serving is. What is a serving?

Mr. SMITH. I am delighted you asked that question, Mr. Macdonald——

Mr. MACDONALD. I am too.

Mr. SMITH. Because the National Canners Association has likely done more work than any group in America on the principle of giving the consumer a guideline as to a serving. We have distributed millions of pieces of literature every year to the consumers, to schools, and other groups (and I have samples of some of them here on the table which I could hold up) all of which give suggested servings or guidelines. We would likely be the last to recommend that this be made a part of a law, because we recognize there are so many problems that such action could open a Pandora's box.

For instance, a serving for a lumberjack in the Northwest where I lived for many years is quite a different thing than a serving for an infant. We all recognize this.

Mr. MACDONALD. That is right.

Mr. SMITH. So it is merely a guideline.

Mr. MACDONALD. But why then——

Mr. SMITH. And this we have done.

Mr. MACDONALD. Then you agree with me that a serving is a very nebulous word.

Mr. SMITH. It can be very nebulous.

Mr. MACDONALD. A serving for my 10-year old boy is not a serving to me. Why then put on the can the number of servings? And by what magic can we say that this can will hold four servings or this can will hold eight servings? How do they determine that?

Mr. SMITH. Let me explain the problem and our efforts to reduce it: You see, we do not say in any of our literature "This will serve  $x$  number of people," but we have tried to equate a serving with a standardized measurement—the cup. Cups are used in recipe books and have been since time immemorial. We tie to this cup nomenclature you see, or part of a cup. In our exhibit here, for example, we have a No. 10 can [indicating]. It holds approximately 6 pounds 9 ounces, or 3 quarts, or 12 cups. Therefore, where it is appropriate to do so—and this isn't always true because of difference of products—we suggest as a guideline, servings in terms of cups.

Mr. MACDONALD. The words "suggest a guideline." Those words don't really mean anything.

**Mr. SMITH.** Mr. Macdonald, doesn't the housewife who has a large family know from experience how many cups of a given product it takes to serve her family? She equates the contents in terms of cups that will be needed to serve her family.

**Mr. MACDONALD.** What is a cup? I mean is it a demitasse or is it a mug? They are both cups.

**Mr. SMITH.** That is very true, and the quantity here that has been spelled out in our literature for a cup is—

**Mr. MACDONALD.** You are not suggesting, I am sure, sir, you are not suggesting that with each sale you hand out some literature so that the woman buyer can take a look at your literature and then see how many cans it is going to take?

**Mr. SMITH.** No; I am not doing that. But I am sure a lot of literature will be needed if we enact into law a standardized serving and make it compulsory in the law. Then it would open up this whole area to easily misunderstood specifics, whereas now it is a general guideline.

**Mr. MACDONALD.** But it is the same word and you are the one that originated the word, apparently. You put on your can a number of servings; is that right? And I am asking you who determines what a serving is, and after you answer that I wish you would tell me what they determine, because I, for one, don't understand it.

**Mr. SMITH.** Well, as to claiming the genesis of the word "serving" I can't say that we are responsible for that, but we feel it is very necessary to give the housewife a guideline.

Now if I may read to you from our literature here, I think it will specifically answer the question that you raise: "Why are industry terms no longer used in recipe writing?" This is one of the several questions that have come to us. The answer is:

Such numerical designations have little meaning for the consumer.

This is talking now about the can sizes generally.

A great deal of thought and work has been done by the home economists in the canning industry to simplify and standardize can size nomenclature for consumer use. Weight or fluid ounce designation is recommended for canned foods because, (a) the homemaker is accustomed to purchasing other foods by weight or fluid measure; and (b) every label must have stated on it the net weight or fluid measure which is a good method of identification, particularly in self-service stores.

**Mr. MACDONALD.** Sir, you don't have to continue because I think my time is up, but I would just like to make the observation that whoever that literature is beamed at, it is a smarter person than I am, because I don't understand what you are reading.

**The CHAIRMAN.** Mr. Springer.

**Mr. SPRINGER.** May I say, Mr. Smith, on that can that you said is a No. 10, you have said 6 pounds, 9 ounces. Turn it around so I can see it. Six pounds, nine ounces.

**Mr. SMITH.** Right.

**Mr. SPRINGER.** So a woman measuring it by ounces in a cup uses a standardized amount in cooking, isn't that correct?

**Mr. SMITH.** The ounces in a cup vary according to the product.

**Mr. SPRINGER.** Every housewife knows that a cup is so many ounces, at least that is the way it is in my home. You say the measurement is a standardized cup. I don't know how many ounces it is, but there



is such a thing. Now you said 6 pounds, 9 ounces. Well, maybe she doesn't know how to do it. You say 3 quarts. Immediately I have some idea of what it is like if I was shopping. I am not a very experienced shopper, but 3 quarts I have a pretty good idea now what that is.

Or 12 cups. Well, I don't know the exact measurement of a cup but it is somewhere around a teacup as I recall. It isn't a mug and it isn't a small one, but 12 cups. Now that is about as good an identification as I can think of for a shopper.

I suppose to an experienced housewife 6 pounds, 9 ounces might mean something. If a cup is say 8 ounces she could divide that and find out how many cups it is. Well, you have said 12 cups, all right. I take it that this isn't a standardized provision. But I would like to cover something else, Mr. Smith, and that is this: Everybody is staying away from this point, at least the proponents of the bill are, and none of them come here or seem to want to come here with any information on this question. Now, you go into this bill here as you have indicated and you are talking about ounces here. Is there going to be any increase in the cost to the consumer?

Mr. SMITH. We believe there definitely would be, Congressman Springer.

Mr. SPRINGER. Why?

Mr. SMITH. There undoubtedly would be an increase.

Mr. SPRINGER. Where is this cost going to occur? That is what I want to know.

Mr. SMITH. Whenever a change in size of a glass jar or a can occurs in our industry, it necessitates a retooling.

Mr. SPRINGER. Do you make the cans?

Mr. SMITH. Many of our canners manufacture their own cans. But in the minimum all of the canners would have to have change-parts or buy new closing machines or filling machines. As you change sizes, of course, these costs would be attendant.

Mr. SPRINGER. Well, now, we have one here who testified as I recall that there would be so many million dollars in the first effort in the changing. There would be then a continuing increased cost from year to year. That was his testimony. Now, what is your testimony on these two points?

Mr. SMITH. It is difficult to cover an industry as broad as the canning industry except in a generality here. It would vary, you can see, by commodity. But without doubt, if you had these changes of can sizes, it would necessitate in the minimum, change-parts for closing machines, for fillers. This would require a slowdown of operations which increases the unit costs.

If a company had sufficient resources so as to maintain the same volume, it would necessitate adding other lines and leaving intact the ones they had without the need for the change-part. This would necessitate additional plant space in which to fit the machines, additional facilities all the way back. This would have an effect from grower right through to consumer. There would be more cost required if this law were passed.

Mr. SPRINGER. Is that going to be permanent? Is that increase going to be yearly?

Mr. SMITH. I assume that as additional changes were required under the proposed law, that this would be a rather continual problem.

Mr. SPRINGER. Will you get us some information? You represent the canning industry in this testimony.

Mr. SMITH. That is correct.

Mr. SPRINGER. Will you get together some cost figures on what it is going to cost the industry to make the change, if you have to make changes in all these cans? I want to know, in addition to that, is there going to be a continuing cost, which is going to be added per unit to the cost of this each year as time goes by. Now those are two things I would like to have, because this is awfully important for this committee to know.

If you are going to talk about making these changes, these proponents are coming in here, I would like to know what this is going to cost the consumer, if it is going to cost him anything. I don't have the information on this question, and that is the reason I am asking you to come forward with it, because that is certainly going to be the first thing when we get over to the floor that somebody is going to ask. One of the things this committee ought to take into consideration in the marking up of this bill is whether or not there is going to be a continuing cost, and an increase in these various products which you have out here now, which you are testifying about. Can you do that?

Mr. SMITH. We can certainly make some projections. These would have to be based on hypotheses as to the number of containers, and so forth, in a given year that would have to be altered, but undoubtedly, Mr. Springer, it would run into the millions and millions of dollars for our industry. We will do that—develop such estimates.

Mr. SPRINGER. I would like this per unit, not in cents but in percentages, what is this going to increase the cost of a 6-pound, 9-ounce can, and down here the 6-ounce can, how much is it going to be increased in cost and the percentages, because the penny doesn't mean anything if that is 12 cents, that doesn't give us any idea how much the percentage is.

Mr. SMITH. Percentage, right.

Mr. SPRINGER. As you well know, the cost-of-living index in this country is based each month on the increase percentagewise, not in cents, but in percentage of increase, and that I would like to have from these industries as they come forward because that is the important item I think, and as far as I am concerned at this point, as to whether or not there is going to be an increased cost.

I will say the proponents simply didn't come in here with any information of any kind.

The CHAIRMAN. I would like for you to tell me what the increased cost would be on one wrapper.

Mr. SMITH. On one wrapper on a can?

The CHAIRMAN. I would like for the gentleman to project, if he can, what the cost for one wrapper is on that can, and then I will get my boy at home to run them off a little cheaper, because I think it would be infinitesimal. I believe you will agree with me that the wrapper itself that goes on there after it has been put in operation—

Mr. SMITH. Of course, our industry is a high-volume and an extremely low-margin industry.

The CHAIRMAN. Sure.

Mr. SMITH. This fact, the National Commission on Food Marketing report indicated, any element that increases cost has to be passed on to the consumer.

The CHAIRMAN. You will agree it is so small that you can hardly compute it for one of those small cans.

Mr. SMITH. The industry puts out 25 or 26 billion units a year.

The CHAIRMAN. That is right. The cost for that would be so small you couldn't divide it into mills, I would say. It would be less than that. But I think when you get down to the unit that goes to the housewife you are going to find that—you might talk about the 26 billion or million or whatever it is—but as I say, when it gets down to the cost of the wrapper, and I can't see—

Mr. SPRINGER. Mr. Chairman, I don't think we are talking about the same thing. I am not talking about the wrapper.

Mr. SMITH. I understand.

Mr. SPRINGER. The wrapper is a mighty cheap thing. Changing that from 10 to 11—

Mr. SMITH. The total cost.

Mr. SPRINGER. I am talking about what this is going to cost if you have other things that go into the operation as a result of the change which is a continuing cost. Now if the wrapper is all that is involved you haven't got much involved.

What I am trying to find out is whether there will be a continuing additional cost in the operation of the machines or the additions or whatever goes into it. Those two things ought to be in, the initial cost and the continuing cost.

Mr. SMITH. Right. Mr. Chairman, may I have 10 seconds?

The CHAIRMAN. Yes.

Mr. SMITH. In defense of our literature and to answer further Mr. Macdonald: A cup is a designation used way back in the history of our Nation by home economists as a basis of cooking, as a basis of recipe. That is why I indicated we have abandoned the industry nomenclature and have moved in favor of cup.

But let me read the one paragraph I didn't have time to read before:

The use of a cup identification as used by home economists: Liquids can be measured accurately in cups and although some foods, such as vegetables, may stuff slightly on being emptied from the can, the approximate cup measure may be given as a guide.

Here are several examples: A can of condensed soup is  $1\frac{1}{4}$  cups. Pineapple juice is  $2\frac{1}{4}$  cups. Green beans—a 1-pound, 1-ounce can—amounts to about 2 cups. There are 8 fluid ounces in a cup if we are reducing it to fluid ounces. This much can be determined easily. But you can see it is more difficult when tied to each of many products, Mr. Macdonald. But the cup is the basic measurement unit that the home economists understand, I think the housewife understands also. This suggestion is on the label, as is also the net contents.

Mr. WATSON. Will the gentleman yield?

The CHAIRMAN. Mr. Macdonald had asked for recognition.

Mr. MACDONALD. I just want to reply that in addition to confusion on the cup, which confuses me even after your explanation, with all due respect, the thing that I still never have understood, and that I

didn't understand after your testimony, my questions went to servings, which are contained on the labels. What is a serving?

Mr. SMITH. Again as a serving is a guide, it is an approximate number of cups depending on the commodity. Cups are related to servings, and this is the way it is published in the literature, as I have indicated. Now my wife, being the mother of 10 and a grocery store shopper quite frequently, knows I am sure a great deal more about cups and equating the cups to servings than I do and probably most of us here.

But I do believe that the housewife finds that it is not confusing. As long as she has the net contents, she knows from experience in dealing with the produce how many cups she would obtain. This I would think would solve it.

The CHAIRMAN. Mr. Watson had a question.

Mr. SMITH. Yes, Mr. Watson?

Mr. WATSON. I just wanted to ask one question. We have had a lot of discussion about cups here. And while some of us on this committee might be undecided as to whether a cup is a demitasse or a jug or a jar or anything else, we are discussing something that Shakespeare wrote a play about—much ado about nothing. Now you deal with the public don't you?

Mr. SMITH. We do indeed.

Mr. WATSON. Are you conscious of any woman in all of your experience who has confusion in deciding what a cup is? Have you ever run across one that would be confused as to what you meant by a cup? Now Mrs. Peterson was talking about a demitasse or something else. Now back home we used to measure it by glugs, two glugs and so forth. But have you ever run across any woman who failed to know what a cup was and asked you to spell it out as to what constituted the size of a cup?

Mr. SMITH. I can honestly say, Mr. Watson, that this is not an area of concern as has been reflected in the National Canners Association or its members. Cup servings, suggested servings spelled out on the label, coupled with the tremendous amount of literature that goes out which we just touched on briefly, I believe, is adequate to provide answers where any questions might arise. Again we have not had the question directed to us. The users seem to understand the guide.

The CHAIRMAN. Well, I don't believe it is that simple. You said that a cup is a serving and a serving doesn't say cups. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. Mr. Smith, I would like to treat if I may first of all, the point raised on costs. Your industry has established voluntary standards for canned fruits and vegetables, am I correct? Formerly there were around 200 sizes of cans?

Mr. SMITH. That is correct.

Mr. DINGELL. Today there are something over only 32 sizes, am I correct?

Mr. SMITH. For fruits and vegetables.

Mr. DINGELL. Fruits and vegetables.

Mr. SMITH. Yes; approximately.

Mr. DINGELL. And as a result of this standardization there has been a significant saving in the can-producing industry, there has been a significant saving to the packers, has there not? This was established by voluntary standards of the industry, am I correct?

Mr. SMITH. That is correct, working with the Department of Commerce.

Mr. DINGELL. This voluntary standard is honored by your industry and I believe it is fully satisfactory, am I correct?

Mr. SMITH. Yes; it has worked as a voluntary program, as it has been.

Mr. DINGELL. Now you are aware of the fact that this bill continues the use of the voluntary standards which have heretofore been available to the industry, are you not?

Mr. SMITH. I had discussed earlier—

Mr. DINGELL. I am aware of that, but I have other points I intend to get into. I am satisfied you are aware that this bill would afford you the privilege of using voluntary standards, would it not?

Mr. SMITH. Yes; but what I pointed out was that the voluntary standards section in the way the procedures are set up, could well become a compulsory section by the promulgation of standards by FDA or FTC in the absence—in other words, if industry adopts the voluntary standards, they then may be made compulsory by Government agencies and then we lose the advantage of innovation.

Mr. DINGELL. What is the objection of having the industry work out standards that are going to be binding upon the industry, to assure that the industry is going to behave properly with regard to the information that the consumer gets?

Mr. SMITH. Well, the industry program is obviously designed in the consumer interest. It is obviously designed to reduce the number of sizes, but at the same time, and I underscore this point, at the same time without freezing them to specific sizes. There is a range, there has to be a normal range for creativity, for innovation.

Mr. DINGELL. On the contrary, you have by voluntary agreement reduced this to 32 varieties of cans and not approximately 32 varieties.

Mr. SMITH. But tomorrow if the consumers through test marketing and so on indicated a preference for another can size not on this list, they could go to that. They could go to it, you see.

Mr. DINGELL. Let me ask you, do you feel that there is a desperate and pressing need for an additional can size?

Mr. SMITH. Well, we have seen in the past decade where there have been some major changes in consumer preference because of changes in size of family and other factors.

Mr. DINGELL. But under the bill you could seek relief after the voluntary standards were adopted by the Secretary, could you not?

Mr. SMITH. We could, but this would—

Mr. DINGELL. Approximately how long would this take you?

Mr. SMITH. Of course, it could drag on into many months, as you know, under the provisions of the bill, or even years.

Mr. DINGELL. As a practical matter, how long would it take you?

Mr. SMITH. On this point we have had considerable difficulty with standards and amendments to standards that now exist, where we work cooperatively, because to get an amendment to a standard sometimes today requires years of time.

Mr. DINGELL. As a practical matter that is an extraordinary circumstance, isn't it?

Mr. SMITH. We hope it will improve.

Mr. DINGELL. As I say, as a practical matter that is an extraordinary set of circumstances. That is not the common practice in your industry.

Mr. SMITH. The common practice is it takes much too long. I would say a year would be——

Mr. DINGELL. How long does it take?

Mr. SMITH. I would say it would take a year to get most amendments through, or longer. We have one very pressing one now pending. We have been pressing for a year to get a modification of this standard.

Mr. DINGELL. Mr. Chairman, I think it would be very helpful for the record, for us to have a statement from the Departments on this particular point as to how long it takes.

The CHAIRMAN. It will be so ordered.

Mr. DINGELL. Now, would you agree that sections 5(c)(1) and 5(c)(2) are simply vocabulary sections, and that it would not be unreasonable for a particular industry to agree on a commodity-by-commodity basis on the reasonable meaning of such terms as medium, small, large, and serving?

Mr. SMITH. And serving?

Mr. DINGELL. Yes. You would have a full opportunity under the voluntary standards section to arrive within the industry on the meaning of these terms. Don't you feel that is a very fair provision as far as the industry is concerned?

Mr. SMITH. Well, we appreciate any interest that has been expressed here in consideration of the industry viewpoint. I only hasten to point out that even after these have been promulgated or recommended by the committee, there is no need, as it is now written, for the Department to adopt them as I mentioned earlier.

Mr. DINGELL. Well, it is very fair to the industry's thought that the industry should be permitted, under the voluntary standards, to fix the meaning of "small," "medium," "large," and "serving," isn't it?

Mr. SMITH. Well, it is——

Mr. DINGELL. This is certainly not a hardship on the industry to fix this kind of a description, is it, among its own membership?

Mr. SMITH. Take a look at these can sizes. We have here a few of the 32. Which is small, which is medium, which is large? Those are three terms.

Mr. DINGELL. I think you are begging my question. It is very fair for the industry to be able to fix their own definition of these terms and then have them approved by the Government and go into effect, is it not? This should afford maximum protection for the industry, should it not?

Mr. SMITH. I believe it does not. It isn't so simple as the industry determining——

Mr. DINGELL. What other concession could you ask from the Government in establishing the definition of what constitutes "small," "medium," "large," or the word "serving," than to have industry fix this definition previous to approval by the Secretary?

Mr. SMITH. But all of this, of course, is subject to review by the Government and approval by the——

Mr. DINGELL. Don't you think that it is in the public interest to avert the possibility of "hanky-panky" and rascality by the industry?

Mr. SMITH. I would certainly feel that the interests of the consumer are better served to allow these products to move to the marketplace, to the consumer, in a free competitive system with the minimum of governmental action consistent with the health and safety of the public.

Mr. DINGELL. Can you tell me how there is a lack of flexibility built into the voluntary standards section?

Mr. SMITH. Well, I covered this before in some detail, and I can review this again, Mr. Congressman.

Mr. DINGELL. Just briefly. I am satisfied if you have got a real point you can bring up the matter.

Mr. SMITH. A committee composed of consumers, of industry and so on, meet and if three-fourths of them agree upon a proposed standard, they make this recommendation to the Department.

The Department does not—as the law is written, so we are advised by counsel—have to promulgate this regulation or this standard, and this means, therefore, that the Department or one-quarter of the committee really ultimately does control or influence the decision. It is not in a real sense a voluntary program any longer. It becomes a compulsory program.

Mr. DINGELL. After the agreement is arrived at by the members of the industry.

Mr. SMITH. It is far more involved than members of the industry being involved.

Mr. MACDONALD (presiding). The time of the gentleman has expired. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Smith, the testimony that we have had before from the proponents of this bill advocates the bill to do two things: one, to remove deception, and the other confusion.

Now in the testimony that we have had from both the Federal Trade Commission chairman and the Pure Food, Drug, and Cosmetic representative, say that anything that might be deceptive they have ample power to reach at the present time. The only question was as to whether they have the authority to proceed by industry.

Now, if they need additional authority to proceed by industry under the Federal Trade Act or the Pure Food, Drug and Cosmetic Act, would you have any objection to having them receive that authority by congressional act?

Mr. SMITH. Well, there are a number of items which are packed by members of our industry. The possibility of abuses arising in particular broad areas, as I indicated earlier, are very small. We believe, therefore, that a case-by-case review certainly has many, many advantages, and is one that should be followed.

I cannot envision that you would have a practice here that would be general in our industry, but I would like to reserve judgment on that and insert a statement in the record later, if I may, after giving more thought to this. It would cover what our industry position would be with regard to an approach, assuming that the same alleged abuse or whatever it may be, is an industrywide practice in this particular—

Mr. YOUNGER. It would have to be an industrywide practice. Otherwise they couldn't proceed against the whole industry.

Mr. SMITH. Yes, I would assume so.

Mr. YOUNGER. But suppose the practice was industrywide, a deception industrywide by labeling or what not. There is nothing wrong in having them proceed against the industry rather than against the individual cases, is there?

Mr. SMITH. I would assume not, but would like to insert something into the record later, as I requested. The possibility of this applying to our industry is extremely remote, because of our long period of working almost daily with the FDA, the agency which administers the laws now on the books as pertaining to our industry.

Mr. YOUNGER. Now as to the other problem of confusion, I know that is rather difficult to meet, because one person may be confused about something and somebody else wouldn't. I know our colleague here, Mr. Macdonald, is very much confused about a cup. So far as I am concerned, a cup is the same kind of a standard measurement such as a yardstick or an inch. We have a metal container that gives the cup or half cup or a full cup, and that is my understanding of what is meant by a cup, a measurement in cooking.

Mr. MACDONALD. Will the gentleman yield?

Mr. YOUNGER. No. I will as soon as I get through. And the confusion on this, of course, is hard to reach, but personally I see no reason that if there are markings or labels on cans which are confusing that there should not be a remedy. The chairman just mentioned to me a while ago that somebody from his office went down to get some pork and beans and there were five or six cans of pork and beans, all of them an ounce or two ounces different in weight, and not standard cans like your have exhibited.

Now I can see that there is a possibility of confusion, and I see no reason why that cannot be added to the authority of the FTC and the Pure Food, Drug, and Cosmetic supervisors. My theory is that if we are only going to accomplish those two things, then I think that what we ought to do is to proceed under the Federal Trade Commission Act, Pure Food, Drug, and Cosmetic Act, as amendments and give that authority, and not create another bill and a lot more confusion, because I am afraid that this would be more like a make-work program for lawyers before we get through with it.

Mr. SMITH. Mr. Younger, I would certainly feel that you have mentioned a different approach and I think a very good one, to go back to the basic legislation and to amend these laws where it would be deemed appropriate. But I do hasten to say, and I don't know that this has been made clear in testimony before, that whatever might be said about the problems of other industries—and they have specific problems which they can best explain—we can say as far as the canning industry, that the variation of weights, even within the same sized container, would continue to exist due to this difference of specific gravity. Also, the nature of the cook or the process requires a fill to the maximum in the container that is possible, consistent with headspace to allow some expansion of food while under cook.

Mr. YOUNGER. Thank you. I will yield now to the chairman, as long as my time has expired.

Mr. MACDONALD. I would just like to point out that the gentleman from California is very seldom confused, but both the witness and myself were confused about what was a serving.

Mr. YOUNGER. That is right.



Mr. MACDONALD. And we still are. Mr. Rogers.

Mr. YOUNGER. I think that is something we have agreed on that should be out.

Mr. ROGERS of Florida. Thank you very much, Mr. Chairman.

As I understand it, there is presently a procedure to establish voluntary status. That is already recognized in the procedure you now use, even though it is now written in this proposed bill, is that correct?

Mr. SMITH. We have standards with the Food and Drug Administration on fill of container, identity, and so forth. Are you referring to these?

Mr. ROGERS of Florida. Even as to quality, is that right?

Mr. SMITH. Are you referring to these or are you referring to the standard on container size?

Mr. ROGERS of Florida. If you decide on a certain can size, there is a present procedure where you can do this by voluntary methods now, isn't there?

Mr. SMITH. We have this in effect.

Mr. ROGERS of Florida. You have done that?

Mr. SMITH. Many years ago it was done.

Mr. ROGERS of Florida. Yes. That is a present procedure that this law doesn't bring anything new on. This is a present procedure that is now used, as I understand it?

Mr. SMITH. No, this proposed law fails to take into consideration that it would completely stifle the innovation that exists under the present procedure.

Mr. ROGERS of Florida. Yes. Now, as I understand it from the testimony I have heard so far, the Food and Drug has authority to move whenever there is false or defective labeling on this branding. The Federal Trade moves when it is false, misleading or deceptive.

Mr. SMITH. The monthly summaries would indicate that these agencies do so wherever abuses coming under their respective jurisdictions exist.

Mr. ROGERS of Florida. I understand the Department of Agriculture moves against meat when there is false mislabeling there, false or deceptive.

Mr. SMITH. I would assume so.

Mr. ROGERS of Florida. And it appears now that fish is covered under this bill, but this also is covered by the Interior Department, I understand, by laws that are similar to those in Agriculture referring to meats. But for some reason they went ahead and decided to put fish here but not meat and meat products and poultry and poultry products. So there is a criminal provision in the Department of Agriculture, but they don't want criminal provisions here. The rest of the products, and so this then gets to be a rather complex piece of legislation, goes up the hill one way and down the hill the other, and I don't know whether the consumer will come out or will until we look at it pretty carefully.

Now, as to servings, as I understand the industry now does research itself and asserts certain average standards.

Mr. SMITH. Guidelines.

Mr. ROGERS of Florida. Servings, guidelines.

Mr. SMITH. Yes.

Mr. ROGERS of Florida. Yes, you are saying maybe a fourth of a cup, there are four quarter-cup servings.

Mr. SMITH. Yes.

Mr. ROGERS of Florida. Or maybe full-cup service.

Mr. SMITH. That is correct.

Mr. ROGERS of Florida. Now it may be that there is someone in Government that can get a better definition, but I am not sure, and I don't know why anyone in Government can give a better definition, phrasing of a serving, than those in industry. But I don't think there is any difficulty there, if they can come up with a better one. I don't think the industry would object to that, would you?

Mr. SMITH. Well, those of us who have been working on it for a long time, many of us have had a lot of Government experience as well as industry experience, and I would doubt that anyone in Government could come up with anything better.

Mr. ROGERS of Florida. Well, I share your feeling, but you would have no objection to that, I would assume, if they could come up with a good definition for serving. I would think you would have no objection to using it, would you? You are putting servings on your packages now.

Mr. SMITH. The very confusion that obviously exists here as to what constitutes a serving and what constitutes a cup which equates to a serving is to me ample reason why this should never be made mandatory or a part of a Federal statute.

Mr. WILLIAMS. Would you yield?

Mr. ROGERS of Florida. Yes; I would be glad to yield.

Mr. WILLIAMS. I would think the definition of a serving would be no more difficult than defining a drink. It all depends on who is eating that serving or who is taking that drink.

Mr. SMITH. Right. I think that is right.

Mr. ROGERS of Florida. So it is simply a way of letting the housewife know about what it would be. So I don't think you would have any objection, would you, if you can come together with the industry and the Government in trying to set this?

Mr. SMITH. Let me raise this flag, Mr. Congressman.

Mr. ROGERS of Florida. Answer this question. Will you honestly say you would object if there was a good firm definition that you could use getting the industry together, and Government?

Mr. SMITH. We would object to a mandatory provision in the law spelling out what a serving is, because of the confusion we feel that would inevitably result. We will be happy to sit down and to discuss it and to do our very best to cooperate with it, whatever the decision might be, but we feel that such a mandatory requirement would open a Pandora's box.

Mr. ROGERS of Florida. It would be just as confusing—there would be just as much confusion in some of these—as some of them claim there is now.

Mr. SMITH. I am not aware that today, from the letters that flow to us and our members—and the products of our industry constitute about 20 percent of those that would have been involved in volume under this bill—that we have any confusion as far as the consumer is concerned.

Mr. ROGERS of Florida. Well, you may be right.

Mr. MACDONALD. The time of the gentleman is up. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. Smith, just glancing through the bill, I find in it, for example, on page 3:

The commodity shall bear a label specifying the identity of the commodity.

And point 2, the net quantity of contents, and as I turn the pages, it seems to me that much of the language in this bill is now provided in existing law, and by virtue of the fact that it is in this bill, the public is led to believe that it isn't covered by law. Is that a fact or am I misinformed?

Mr. SMITH. You are absolutely right, Congressman Nelsen. Through all the hearings I believe we have failed in some way to get across the fact that there are adequate laws now on the books to take care of deception, in labeling and in packaging, and the FTC and Federal Food and Drug are taking action weekly wherever they find abuses in America. So the answer is, "Yes, they do have adequate authority."

Mr. NELSEN. Now, it is my understanding that relative to the fill of a can, for example, that in a case of peas in a can, that a regulation or a standard has been established, where, for example, a can of peas, when it is emptied out, the liquid is poured out and the peas are put back in the can, it must be full of solids of peas. Now, this is a standard that has been established. How was it established?

Mr. SMITH. This is a rather involved procedure, Mr. Congressman, but I would take a moment and comment on this if you would like.

We do meet with the Food and Drug Administration. We work closely with them almost on a day-to-day basis. When we get to a standard of fill of container, such as peas, we agree that the housewife would feel that she was not getting her full due if, when the juice or the liquid surrounding the peas was poured off and the peas poured back into the can dry, they failed to fill the container to its height, to the top of the can. So this has been agreed upon in this standard.

In other items where it can't be readily done by pouring the product back in the dry form, then the fill of container is worked out on the basis of filling it to the absolute maximum of the container without crushing the product when the lid or top is placed on it in the closing machine operation, and to allow still a fractional head space so that in the cooking process when the food expands, it does not cause a bulge on either end or on the other hand, underfilling it, which would tend in a process to overcook the product and thus adversely affect the quality and taste.

Mr. NELSEN. Now, as I understand it, this is done under section 401 of the Federal Food, Drug, and Cosmetic Act, that these standards were established, were they not?

Mr. SMITH. That is correct.

Mr. NELSEN. In cooperation with industry. Now the Court has held, has it not, that the Food and Drug Administration has the authority to determine and to command the amount of solids in a package or in a can? It has that authority granted to them under the law, and the courts have held that they have that right; is that correct?

Mr. SMITH. Absolutely, and all the standardized products and the various standards that we mentioned, fill of container, identity and so on, if the product does not meet these standards, it is subject to seizure by the Food and Drug Administration and the courts have upheld the FDA in this.

Mr. NELSEN. I noted in your testimony that these rules that are to be promulgated, there will be industry representation in the promulgation of the rules, but in your judgment whatever comes out of the conference does not necessarily mean that this must be the rule.

Now, supposing that the Federal Trade Commission, or whoever the authority would be in charge of this, decides that they are not going to abide by this recommendation. May they then, according to your interpretation, go ahead on their own?

Mr. SMITH. Yes. It is my understanding that if the voluntary standard regarding containers is not promulgated by the Department of Commerce under the procedures as they would affect our industry, that the Food and Drug Administration and the FTC could then adopt and would likely adopt a standard which would make them compulsory.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Kornegay.

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

Mr. Smith, one subject matter that I am very much interested in is what would the cost be to the industry, which of course would be passed on to the consumer, if this bill is passed? We have had a great deal of difficulty in getting any information along those lines.

The spokesmen for the administration put nothing in evidence as I recall, as to costs, other than the cost of several million dollars, as I recall it, to the Government in administering the program. One lady testified, a consumer, I believe, that this bill would reduce the cost, as I understood it, from the present level of about one-half of 1 percent. I have seen somewhere that one of the large manufacturers in the country estimated that the provisions of this bill would increase cost about 2½ percent.

Now, assuming those figures are reasonably close and correct, there would be a net 2 percent increase to the consumer. Now, in all frankness, I must say that it is my feeling that my constituents are far more concerned at this time over the total cost of groceries than they are as to what is on the label, how many servings there are or any thing like that.

Before I make up my mind, I would like to have some information as to cost. If you can, pursuant to some of the suggestions that have been made heretofore, furnish us with some information and estimation as to what the cost would be in the industry, I would appreciate it.

Mr. SMITH. I will be happy to do that, Congressman Kornegay.

Mr. KORNEGAY. Now, as far as the cans are concerned, aren't the sizes of those cans somewhat dictated by the public, that is, by those who purchase?

Mr. SMITH. We believe, Congressman Kornegay, that this whole effort is the result of the consumer need or demand. She is the one who at the marketplace every day determines whether she wants to buy a 46-ounce versus a two-and-a-half size can; or if a new can size is test

marketed and she prefers this and indicates so by purchasing it, it becomes apparent to the company testing the product that this size will be acceptable, then again it is the consumer who makes this determination. So these are—

Mr. KORNEGAY. I don't have a great deal of experience to rely on, as does the shopper, but when I am in Washington I am by myself a great deal of the time, and I do have to do some shopping. Now, when I go to the store buying for myself, I am going to buy as small a can of peas as I can find.

Now, when I am at home with my family—family of five—my wife buys the larger can. Now I know when I buy that small can that the price per pea is greater than it would be if I bought a large can, but in the final analysis, if I eat only one-third of a serving, whatever that is, I don't know, and let the other four or five servings in that can go to waste, then I have spent more money per pea and it would be—than it would be if I bought the smaller can at a higher cost per pea, when you compare it to the big can. The point I am trying to make is that it depends upon what the need is.

Mr. SMITH. That is correct. We believe, Mr. Congressman, that these container sizes are in response to consumer demands in the marketplace, and adequately reflect the need for this range of sizes which you have detailed so well.

Mr. KORNEGAY. Now, sir, some of the members of the committee have suggested that this is a real big deal, because in those areas where he can go beyond unfair and undetected practices, that you would have the right to come in be heard and get a hearing.

I say this somewhat facetiously, of course, but I am reminded of the old story about the western judge that assured the defendant in the rustling case that they were going to give him a fair trial before they hung him. So with that I will conclude, Mr. Chairman.

Mr. SMITH. Thank you very much. We do have our concern and reservations about the procedures outlined in the bill.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

I have seen situations like this develop at the State level and the Federal level, and the need for cooperation to be reached between Government agencies and in the industry is oftentimes overlooked by many of those who are in the decisionmaking role. For example, the cranberry problem. There wasn't adequate communication between industry and the Food and Drug.

Mr. SMITH. Yes.

Mr. KEITH. There was a very unfortunate situation which developed in the cost of cranberry products to the consumer at Thanksgiving time. It also cost the taxpayer \$10 million in indemnities, all of it unnecessary in my view. At the State level in Massachusetts, where we had a problem comparable with this one, we found that the Bureau of Weights and Measures came in and asked for new packaging methods for ice cream and for new methods of sealing bottles. In each case they hadn't adequately consulted with industry, and they were imposing a burden that caused their recommendations to be rejected by the committee of the State legislature which was considering the problems.

To cite another example, the SEC has maintained a fine cooperative relationship and has worked very closely with the securities industry in drafting recommendations for updating the Securities Act. I wonder if there has been a comparable effort by Food and Drug and the Federal Trade Commission to sound out the packaging industry as to how some of the problems which have been pointed out to this committee could have been handled?

Mr. SMITH. In the area of weights and measures, the industry has worked closely with the Federal Bureau here, and many other parties were involved in the promulgation of a model weights and measures bill or law, which has now been enacted in at least 25 of the States.

We have supported this approach. We believe that it is sound. We subscribe to that. We certainly are against deceit in packaging or labeling. We are concerned about controls that go beyond that. There are a number of provisions in the bill we are considering that go beyond the model weights and measures law.

Mr. KEITH. Generally speaking, I think that the response which this legislation has provoked indicates that there is a very real need in some areas. I just wonder what positive approach has been taken by industry and by the Government to jointly come up with amendments to the present law that would overcome the abuses which exist.

Mr. SMITH. Well, I believe from time to time suggestions have been made on specific provisions of the bill. The National Canners Association will be very happy to discuss this at length, paragraph by paragraph.

Mr. KEITH. Has there been any effort on the part of the Federal Trade Commission or the Food and Drug to set up a committee that could study this and come in with recommendations?

Mr. SMITH. Not to my knowledge on this specific bill. There has not been.

Mr. KEITH. In your view would such a committee serve a useful purpose?

Mr. SMITH. I think it would be certainly helpful to us to sit down with the Food and Drug, the agency with which we would be dealing as manufacturers here, and to discuss any aspect of this that is in their province.

Mr. KEITH. It is my understanding that the chairman indicated that generally speaking, the canners had done a pretty good job, and would not be adversely affected by this legislation. Is it your understanding that you are now exempt from it, or it is that just because of the fact that you have done such a good job that you might be exempt?

Mr. SMITH. We are definitely not exempt. We would be covered by the provisions of the law. In fact, we have done a great deal over many years through the voluntary approach, and it has been well accepted by consumers, and we felt all concerned.

We now may be operating with a different set of rules which does give us real concern, and we are concerned about the administrative blank check to the agencies, the governmental agencies in some of these critical areas.

Mr. KEITH. Now, would you say going to the standards of the packaging industry that this could be sufficiently standardized to be attempted?

Mr. SMITH. We are not exempted, as I indicated, but I would not be prepared to say that I believe the food industry as a whole has endeavored conscientiously to satisfy the consumer, to give her that which she desires and wants, and to avoid deception in packaging and labeling. But to rate them as to who has done the best and the next and the next would be very difficult for me to do.

Mr. KEITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. Smith, in response to Mr. Kornegay's question, you said that you would be happy to provide estimates as to the costs of doing business for the canning industry under this legislation. Might I ask on what basis these estimates will be made? What in the legislation do you anticipate would constitute a cost item?

Mr. SMITH. Well, as I said, this is going to presume some hypotheses here as to the number of items where changes would be required, where there would be hearings held, and where you may eventually get compulsory standards. Obviously anything that would be coming into the marketplace that would be new, you are faced with this problem initially, and this would have to be estimated.

Mr. VAN DEERLIN. It is not anticipated that any agencies under this legislation would increase your present number of can sizes; is it?

Mr. SMITH. Well, if they want to standardize weights to one-half and 1 pound, and so forth, this would be inevitable in our industry. One cannot have it both ways. They either have to have the simplified containers with a reduced number of can sizes, or there will be a great proliferation of can sizes, in order to accommodate fixed weights, owing to the different specific gravities of products.

Mr. VAN DEERLIN. Would it help in your estimation of these costs, if we could get the agency officials to specify some plans that they might have in this regard?

Mr. SMITH. It would certainly be helpful, as this would help us with the basic premise on which to build our cause.

Mr. VAN DEERLIN. The retailers whom you supply have a great interest in making certain that they don't have an infinite number of can sizes to stack on their shelves—isn't that so?

Mr. SMITH. I would think so, still there is no alternative to meeting the requirements of fixed weights. In other words, to accommodate the different specific gravities we have discussed.

Mr. VAN DEERLIN. I should think that the committee would make it our business to find out as precisely as possible what the intent would be, if this law is passed, and it would help you in preparing these cost estimates which otherwise leave you completely in the dark.

Mr. SMITH. Yes. Yes, obviously so with an industry as broad as ours. Let me cite the State of California, your State, and the testimony of Helen Nelson, in which she estimated a saving in California of approximately \$25 million. With the significance of our industry in California it would not be difficult to say with assurance—and this could be backed with the figures—that \$25 million would be a very small saving in comparison to the additional cost with which the canners of California, in the broad lines they pack, would be faced if this bill were enacted in its present form.

MR. VAN DEERLIN. Perhaps we can get some help for you.

MR. SMITH. I certainly hope so.

MR. VAN DEERLIN. Thank you, Mr. Chairman.

THE CHAIRMAN. Mr. Cunningham.

MR. CUNNINGHAM. Mr. Chairman, I yield to Mr. Nelsen.

MR. NELSEN. Thank you. I was going to make the observation earlier, when we discussed the possibility that the regulatory body in this case might completely ignore recommendations, and I refer to the legislation that was adopted by this committee at the time of the cigarette labeling.

We were considering legislation at that time, and bills had been introduced, hearings were about to start. The Federal Trade Commission came down here and advised us they assumed that they had the authority to do all of these things and moved right in. But we sort of put the brakes on.

Now I don't find any timid attitude on the part of some in governmental positions to overexercise authority, and I am sure that we in the Congress and you in the industry want to be very sure that whatever we do, and I am sure the chairman would agree and all the members of this committee, that we want to be very sure that we do not stifle and damage an industry that is willing to cooperate, if we can work out some type of media of liaison between industry and Government as has been pointed out by Mr. Van Deerlin. I am sure we would all agree that more good results could be obtained in that way. Now may I ask this question?

MR. SMITH. Yes.

MR. NELSEN. I notice that there are times, for example, a standard package continues to be used and in order to meet inflation that moves in, so costs go up, so the size of the package remains the same, but the content is reduced in order to maintain a standard level of price. This seems to have been done in some cases.

This may not be the area that you deal in, but has this been true in the canning industry, where the content, the weight is reduced, in order to maintain a standard price that may have prevailed over a period of years?

MR. SMITH. No, this would not be the situation, generally, in the canning industry. The nature of the process and the fill of container and other standards which we have worked out cooperatively with Government, we believe have been mutually advantageous.

So there can't be any arbitrary change on this, and if the price goes up, the housewife, I presume, would move to the next size or lower priced item in her purchasing.

MR. NELSEN. Supplementing what Mr. Kornegay has said, I mention that at the present time I happen to be doing the cooking at our own house. Mrs. Nelsen is back in Minnesota, and I, too, buy the small can, but I would like to suggest to Mr. Kornegay he should buy Green Giant peas. They are the best.

THE CHAIRMAN. Mr. Cunningham.

MR. CUNNINGHAM. I have no questions.

THE CHAIRMAN. Mr. Pickle.

MR. PICKLE. Mr. Smith.

MR. SMITH. Yes, Mr. Pickle.



Mr. PICKLE. On the canned products which are on the table, you used the phrase "servings"?

Mr. SMITH. We do not on these cans.

Mr. PICKLE. In your testimony you say that this is all right for you to do it, but the Government cannot say what is a serving, by our law here. Now aren't you saying that you can put it on the can, yet the Government shouldn't be allowed to say what is a serving?

Mr. SMITH. The difference is, Congressman Pickle, that under the bill this would become a mandatory provision. Ours we have always maintained as strictly a guideline. Such titles as this leaflet, "Nutritive Values of Average-Size Servings of Canned Foods," you see, have been published by the millions of copies. These we maintain only as a guideline, however.

Mr. PICKLE. But if it were mandatory, would that make the definition of a serving accurate or wrong in itself?

Mr. SMITH. If purchases were made on the basis of contents serving a number of people and it served only half that many, the consumer may feel he had cause for strong protest, or even legal action.

Mr. PICKLE. I understand. A serving is broad and varied. And yet you say what is a serving on your cans. Now why is it that a Government agency, who is a promulgating authority working with you, couldn't determine what is a serving also?

Mr. SMITH. If it were strictly a voluntary guideline as such and not a requirement of law that it be so indicated, I would see no problem.

Mr. PICKLE. Well, would you object if you had voluntary procedures, and then at some point somebody would have to determine what was a measurement? Would you object at that point, if it was the Department of Commerce or the Federal Trade Commission, being able to say what is a serving?

Mr. SMITH. At the point that a serving would be determined and made a part of the law, we would have concern at that point.

Mr. PICKLE. In your testimony you have thrown out considerable opposition to section 4.

Mr. SMITH. Yes.

Mr. PICKLE. As well as in the vocabulary or the definitions under section 5.

Mr. SMITH. Section 5 is our particular concern.

Mr. PICKLE. Yes. I think I disagreed with you on that. I think there are certain advantages to be had by eliminating the qualifying statements. The heart of this measure though, it seems to me, is that this law is trying to say that we go beyond economic deception, and that we want to be able to give the consumer the ability to have immediate and instant price comparison.

In all of your statements, however, you haven't mentioned price comparison, or if at all, very, very little. That, it seems to me, is the most difficult thing to try to establish, and yet you haven't mentioned it. Have you purposely ignored that phase of it?

Mr. SMITH. Well, of course, the existing laws do not go to the point of price comparison. This is in the economic area. The bill as originally designed, as we had understood it, was purported to prevent deception in packaging and in labeling. Moving on into the other areas

such as the economic, we feel that the marketplace is the best place for these to be determined.

If a packaged product confuses the housewife, if she is dissatisfied with any of many factors, she likely will not repeat her purchase, so she casts a vote every time she buys a product, either favorably or unfavorably.

We think she is the best judge after all, and I have discussed this. As I say, my wife shops for a large family. I have talked to many women who buy for their families. I don't sense any great antagonism or any real problem here. I don't think that we can find any great flood of letters coming into Federal agencies or probably to Members of Congress. You gentlemen would know. Certainly not to the NCA or to our industry, that indicates that there is a problem here in making rational price comparisons now.

Mr. PICKLE. Then it is your position that a shopper is able to make price comparison now in the marketplace, and that there is no need for additional legislation in this field.

Mr. SMITH. We feel there is no need in the field of making price comparisons, that is correct.

Mr. PICKLE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

Such as Smith, when your industry puts forth these descriptive terms such as serving, cup, and so forth, is that just a desire on your industry's part to put something else on the can or the label, or is it an effort to help the shopper in determining just what he or she will get from that particular container?

Mr. SMITH. It would be the latter, Mr. Watson. We have responded to the request on the part of consumers, housewives over the years, to furnish a guideline which would be helpful to them in the feeding of their families—and this we have done with full knowledge of some of the pitfalls of the mandatory aspect—and suggested them as guidelines.

Mr. WATSON. And our population today is getting younger and younger. Of course, they might not be so experienced in how many servings would be in a No. 10 or a No. 3 can, and so your effort was to try to be of assistance to them and eliminate the confusion that they might have in trying to decide what size can?

Mr. SMITH. That is correct.

Mr. WATSON. That was the purpose of it, wasn't it?

Mr. SMITH. That is right.

Mr. WATSON. And I think it could be helpful, and I notice on one of the earlier packages that they listed 24-ounce servings that might be helpful to put some specific weight designation to the serving rather than using jumbo or midget or standard or what have you.

Mr. SMITH. Of course these terms are not terms that are used in our industry, the qualifying terms you just mentioned.

Mr. WATSON. Of course your industry is in the business to make money, and to make money by serving the public and meeting the public's need, rather than deceiving the public.

Mr. SMITH. That is correct.

Mr. WATSON. Is that correct?

Mr. SMITH. It certainly is.

Mr. WATSON. It is your position that the industry is trying to simplify this to a maximum degree compatible with meeting the needs of the new buying public today, that you are trying to simplify this?

Mr. SMITH. There is no question of this. As a matter of fact, Mr. Congressman, we have gone we believe, well beyond the provisions of the present law in order to give the consumer of canned products more information from which she can make an intelligent and rational choice. Our 1966 issue of our labeling manual which I hold in my hand, indicates the complexity of the subject and details the language terms, and so forth, to be used on labels of the many hundreds of different items that are canned. But this has been the basic premise behind our action, to be helpful to the consumer.

Mr. WATSON. And it is further your position that we have adequate safeguards now in existing law to protect the public against unfair or deceptive labeling?

Mr. SMITH. We sincerely believe that is so in the labeling and packaging area.

Mr. WATSON. And thirdly, it is your contention that the passage of this legislation would result in, as one earlier witness said, a low choice and a high cost to the consuming public.

Mr. SMITH. This would certainly be the end result, if it were enacted in its present form, particularly section 5, which goes to control of packaging.

Mr. WATSON. We appreciate the testimony. I guess I am a little old fashioned, but I have a lot of confidence in the consuming public. I think we are getting smarter every day, rather than dumber every day, and the Government doesn't have to tell us everything to do, and I don't believe the American public believes that, when they read a sign "Put a Tiger in your Tank" that we actually get a tiger in our tank. We ought to have a little more confidence in the American public.

I share the feeling of my colleague, who said that if we pass this legislation, we are going to find the housewife suddenly faced with the inability to buy the can or the package that she has been accustomed to. As the old adage is, we make our habits and then our habits make us.

This Congress is going to face the wrath of the buying public, the housewife, who is accustomed to buying one particular size, if she suddenly finds that Congress has said that that isn't the proper size for her. Now, you don't have to buy it by ounces. We want to tell you how many peas are in the can, and then you can buy the can and divide the peas yourself.

Thank you very much.

Mr. SMITH. Thank you very much. That squares with our philosophy.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

Mr. Smith, in listening to your testimony, and particularly your statement about standardizing the size of cans, is it not true that your industry, when it standardized can sizes, was in effect standardizing volumes of containers?

Mr. SMITH. Yes, it was in the beginning, you see. The canning industry grew up in various parts of the country—

Mr. SATTERFIELD. To get back to my question, I hate to interrupt you, but my time is short. Looking at can No. 10, you have 6 pounds and some odd ounces.

Mr. SMITH. Yes.

Mr. SATTERFIELD. I don't see where that relates to the can at all, whereas the cup size and the fluid quantity, being measurements of volume, do relate to the can, isn't that correct?

Mr. SMITH. That is correct. Your statement is correct.

Mr. SATTERFIELD. It seems to me that in this hearing to this point we have been talking about three things basically. We have been talking about price, we have been talking about weight, and we must talk about volume.

I see a relationship between price and weight and between price and volume. But I would like to ask you, sir, do you know of any relationship used in the canning industry that would relate weight and volume?

In other words, if it were decided that products would be put out in specific standardized weights, could this be related in any way to the standardization of the size of the cans that you have already promulgated?

Mr. SMITH. Well, it could not and maintain equal weight, because of the various specific gravities or densities of the product being packed. You would have a proliferation of can sizes to pack all of these items to the same given weight.

Mr. SATTERFIELD. Based on something you said earlier then, if weight were to be the standard, then you would have a proliferation in the sizes of cans, would you not?

Mr. SMITH. That is correct, many, many fold.

Mr. SATTERFIELD. And this would increase tremendously the amount of cost of packaging products in cans.

Mr. SMITH. Fantastically. If you add this fact to the basic premise which Congressman Van Deerlin mentioned—if this were known to be firm—that this is the intent of the law as applied to our industry—we could come up with additional costs to the industry that would stagger this committee.

Mr. SATTERFIELD. I would like to ask you one other question in this connection with regard to statements that have been mentioned in connection with voluntary standards that might be agreed to by the industry. If it were made known to you by a publication in the Register that specific increments of weight of a product is to be the criteria, and you had the opportunity then to meet, in your humble opinion do you believe that you could arrive at any voluntary standard, insofar as cans are concerned, that would meet these criteria?

Mr. SMITH. As I said, it would be virtually impossible.

Mr. SATTERFIELD. I want to ask you one other question, sir. Under that circumstance is it your feeling that your industry would be operating voluntarily? I am talking about you being told to voluntarily come up with standards as to weight.

Mr. SMITH. Yes, I understand.

Mr. SATTERFIELD. Do you feel that that would be a voluntary action and would this mean that you could act voluntarily?

Mr. SMITH. Well, under the set of circumstances you have described, it certainly would not be the voluntary program we have now. I would think you would have to categorize this as moving toward a compulsory program. If after all the problems attendant to uniform weights they (the Government, after passage of the bill) still say, "You pack all foods in uniform weights, half-pound or 1-pound sizes," and we replied and said, "We cannot do this without the other proliferation of can sizes," and they said, "Go ahead and maintain the weights, one-half, 1-pound size," then we would not consider this a voluntary program and would resist it, of course, with every possible resource we have.

Mr. SATTERFIELD. This would really put you back where you were before you had your voluntary standards, as far as can sizes are concerned, would it not?

Mr. SMITH. Certainly, if there is any area now of misunderstanding and concern on the part of the housewife, it would be magnified manifold if we should go the other route. You have so many millions and millions of housewives buying canned foods every day, used to certain sizes for certain products, and suddenly she finds these products instead of in the one or two sizes she had been buying, she would find them in possibly 10 or 15 sizes.

In trying to resolve these two objectives of the bill, we really face almost insurmountable, if not insurmountable, problems.

Mr. SATTERFIELD. I have no other questions.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman.

Following a little different line of inquiry from the one developed by Mr. Satterfield, who was talking about disorganizing what has already been organized in the food processing and distribution field. I am mindful of the statement I have heard, how true it is I do not know, that over half of the consumer products on the shelves today were developed within the last 10 years, and that there are new things coming on the market all the time. I am wondering about the impact of this kind of legislation on a processor or food packer or manufacturer who has a new product in mind. He thinks it might be attractive and useful to the housewife and wonders what he has to get over in order to put it on the market.

I am not sure I understand the legislation that is before me. I happily am not an attorney, so I have trouble with this language from time to time, but if I understand it correctly, let's take an example like this new cheese spray idea, the fellow who has the idea of marketing this new produce. He tests the market, buys the machinery, makes the investment, hooks up with the distributor, and so forth, and then he comes out on the market.

The promulgating authority is defined as the Secretary of Commerce in this instance. If he finds after a hearing in compliance with section 7 of the Administrative Procedure Act, not that there is not anything deceptive or dangerous or unhealthful about this packaging, but that it is likely to impair the ability of consumers to make price-per-unit comparison, assume for the moment this is the only brand of canned aerosol cheese on the market and it is difficult for the housewife in the opinion of the Secretary or one of his designated

subordinates to decide how to make a unit comparison of price between cheese packaged this way and cheeses put out in a wrapper on the market, he can then within 60 days issue regulations designed to establish reasonable weights or quantities or fractions or multiples thereof in which such consumer commodity shall be distributed for sale.

Within 60 days the producer of the new product can ask for a procedure to be set up to come up with a voluntary standard.

Assume again for the moment that he is the only one who has got this product in the field. As I understand it, on this panel will be adequate representation of manufacturers, presumably including his competitors, distributors, and consumers. Maybe they do not want this product in competition to their older product. If he somehow manages to get over that hurdle and gets them to come up with some standards, he may not, at the same time they may not agree to a standard, they have 18 months to do it. Meantime, his item has been listed in the Federal Register as one found by the Secretary to be misleading or misbranded, and he may not, he has no assurance in advance that he is going to be able to get his product as presently packaged on the market.

I wonder how many people are going to undertake the investment and research and marketing and so forth necessary to bring a new product into the marketplace confronted by that kind of series of obstacles.

Mr. SMITH. I think that is an excellent question, Mr. Congressman. Our own industry point of view is that section 5 of the bill (and its various subsections) if it were passed would virtually stifle initiative in the field of innovation in packaging, including new sizes which innovation in the past has given the consumer an ever better product, an ever more convenient product.

The number of reasons that you mentioned underline it. Even if the item could be test marketed without prior approval, and there seem to be legal differences of opinion here, but let's assume that it could be, without any hearing, then it would not be difficult, as I have implied, for lots of complaints to be generated for various reasons. When these complaints come in, a hearing could be called. Then there is the required publication in the Federal Register, competition is immediately tipped off to the plans of the innovator; and without innovation in the food industry over the past decades I am sure we never would have grown to what we have today.

I believe you have hit a very, very key point. If this section were passed, it would certainly tend to standardize not only the container sizes, it would tend to take from the consumer, many rights she now has in the selection of products which she may well find even better than present products.

Mr. GILLIGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Following up on Mr. Gilligan's statement, would you submit to us on behalf of your group whatever type of proposal you think could be lived with by your industry? You have had more experience in your industry than any other on premarketing, pretesting, and proposals for new products so you can best suggest how to do this once a mandatory standard was established?

Mr. Chairman, could we request the same from the Department, so we will know what they suggest as a system that could be used or whether such a system is even possible?

Mr. SMITH. Mr. Congressman, this pertains to new products now?

Mr. ADAMS. This pertains to the very thing Mr. Gilligan was talking about. I mean I do not think we can assume that every man who has created regulations or every Secretary is going to be absolutely unreasonable, but if you think that there is a specific system that could or should be followed as to new proposals which might violate the established standard, I would like to know what your proposal is and hear the same from the Department.

Now I want to inquire specifically from you on the terms of this bill. Do you agree that section 4 and all the way through section 5 to 5(c)(1), is nothing more than a labeling bill?

Mr. SMITH. Essentially, that is correct.

Mr. ADAMS. Now starting at 5(c)(1) there is nothing mandatory at all established in the bill, is there?

Mr. SMITH. The wording of the bill I am sure is intended to do this. Our interpretation of the end result is that we come out with the opposite.

Mr. ADAMS. So starting at 5(c)(1) or actually in section 5, you start with a series of possible regulations of the industry by a regulating authority; is that correct?

Mr. SMITH. That is correct.

Mr. ADAMS. After hearings. Now is there any question in your mind but that your industry is protected in its present voluntary standards by section 5(e), which provides that any time there is a mandatory regulation, anyone in the industry can come in and request that the Secretary go into the voluntary procedures that are provided under section 401, next that you are protected under section 5(f), which provides that any customary—5(f)(3) on page 9—any customary can be used, and under 5(f)(1), which says there cannot be a mandatory standard established which would vary from any voluntary product standard in effect when the consumer commodity was published.

Now do not these in an ironclad fashion, say that your system which you have developed is not to be tampered with by the Secretary?

Mr. SMITH. No. Any can size that we now have, any that you see here—if complaints are filed and there is a claim that there is deception, this could open the subject of further usage and a new can size could be designated.

Mr. ADAMS. As I understand it, it says "No regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may, one, 'vary from any voluntary product standard in effect with respect to that consumer commodity' which was published, (a) 'before the publication of any determination with respect to consumer commodity.'"

Mr. SMITH. At that time, that is correct—all that are now in existence.

Mr. ADAMS. Right.

Mr. SMITH. Those in use at the time the law went into effect would continue.

Mr. ADAMS. Right.

Mr. SMITH. But it may change subsequently.

Mr. ADAMS. You have had 40 years to develop this, and if we can get to the problem Mr. Gilligan raised on how we go on with innovations, your industry would not do anything except be required to do some labeling changes.

Mr. SMITH. Mr. Adams, let me cite a specific example of our concern: The proponents of this bill before both the Senate and House committees have mentioned a particular product. I will not mention it, in protection of the product. They have mentioned it again and again as being an example of deception in packaging, or in the minimum, confusion to the consumers, even though the net weight is clearly stated. The product is packed in different can sizes than any we have here, because this particular product adapts itself best to these sizes.

Now what they do not say, but they do know, because we have let them know the facts, is that the Government and industry worked together for 7 years, 7 years, to work out detailed standards of identity, standards of fill of container for this product. Seven years, and yet the proponents of the bill have specified this product as being guilty of these abuses when such is not the case. The critics are clearly in the wrong.

Now this is the thing that concerns us.

Mr. ADAMS. I agree that there have been some statements on some of these items, but as was pointed out by one or the other Congressmen in his questions, you deal with a volume concept. The liquor people deal with a volume concept, and we do have standardizations in that area, so that housewives can do it. I mean housewives know there are 2 cups in a pint and there are 2 pints in a quart and 4 quarts in a gallon and so on, and the industries have standardized on them, and I think under this bill are protected in their standardizations. You heard my example the other day with one of the witnesses of the feathers in the 1-pound box.

Mr. SMITH. Yes.

Mr. ADAMS. Now this is price comparison as it was with some of the others, and it has been pointed out there has been a revolution in packaging, dehydration, formulization, all of these things that create these new products.

Now what we are trying to do, I think, in this bill, and I want your comment on it, is to take the process and the system that has been developed in the canning industry under the voluntary programs for years, and apply it to these other industries to help them do in a year or 2 years what has taken you 40. Is that correct or not?

Mr. SMITH. Well, we would have no objection if they utilized our voluntary program as it is now utilized.

Mr. ADAMS. And that is provided for in the bill, is it not?

Mr. SMITH. No. In the bill there is no range—no flexibility. This is where the mandatory comes into force. The proposal adopts as of a given date what we now have, but does not provide for new containers to come in without their being subject—

Mr. ADAMS. Just a minute. It says on page 8 under (e), it says that if the Secretary goes out and promulgates, that he is going to put in some regulations on "X" commodity, it says "any time within 60



days, any producer or distributor" affected may request the Secretary of Commerce "to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to"—And when that happens, then the Secretary must transmit a notice, and as I understand it in here, if a voluntary standard is agreed upon and can be done, then the mandatory standard must follow.

Mr. GILLIGAN. Would the gentleman yield for a question?

Mr. ADAMS. As soon as he answers.

Mr. SMITH. It tips off competition on the publication of the new product, you see.

Mr. ADAMS. No, no, I am talking about a whole commodity industry now.

Say some of the things that have been mentioned are detergents and a number of nonfood items that you have a great proliferation in certain items such as potato chips, and so on that have all of this variation.

Now what I am saying, if the Secretary says we are going to go in and regulate detergents, as I understand it any detergent manufacturer can come in and say "We want to establish a voluntary standard by industry," the Secretary cannot go ahead until they have had the chance to do this, and then if they cannot agree at the end, then he can do something.

Mr. SMITH. Or do nothing.

Mr. ADAMS. Or do nothing.

Mr. SMITH. And assuming going either way on this, one-quarter of the committee could then influence the Department as to the course of action.

In other words, the Department would still tend to control. It does not automatically have to issue the standard recommended by the three-fourths of the committee.

Mr. ADAMS. Right. But what we are doing, is it not, is telling these industries that they should do what your industry has done the best they can.

Mr. SMITH. But the point is that if they become stymied on this and they cannot agree——

Mr. ADAMS. Then the Secretary can go ahead.

Mr. SMITH. But if he does not go ahead, the FDA or the FTC will go ahead and then what was voluntary becomes compulsory.

Mr. ADAMS. Then we expect you, under the provisions of section 8, which says that they are to come in and report to us each year what they are doing, we certainly expect that somebody from your industry is going to be up here telling us to ask him when he comes in and reports why something has not been done.

Mr. SMITH. Regardless of the good intent and we do not question that, I have in my pocket right now a matter put on my desk this morning that is apropos to your comment. Here, too, the intent of the Government is one of full cooperation in issuing an amendment to a standard. We filed it in July of 1965. We are still pleading to get it in August of 1966. We desperately need the amendment on this commodity. The industry could suffer great loss in the interval, as another packing season is underway. There is indecision as to what to do.

We have no assurance that the Government is going to be able to give us an answer on such points within a year, and even if they did and we could be guaranteed that, what loss has been sustained in the interval?

Mr. ADAMS. Then your problem is with administration and not with the substance?

Mr. SMITH. Administration is a very important aspect of this section 5, as you say.

Mr. ADAMS. I have one more question. Mr. Gilligan wanted me to yield.

Mr. GILLIGAN. If I may, sir, you pointed out on page 8, under (f) :

No regulation promulgated may preclude the use of any package or of par-consumer commodity, may, one, vary from any voluntary product standard in effect with respect to that consumer commodity and so forth.

Now on page 9, (3) continues the sentence :

No regulation promulgated pursuant to subsection (d) (2) with respect to any ticular dimensions or capacity customarily used for the distribution of related products of varying densities except to the extent that it is determined that the continued use of such product packaged for such purpose is likely to deceive the consumers.

Mr. SMITH. That is the key point.

Mr. GILLIGAN. This is an open question. I do not know. Does that or does that not tend to contradict what was said by way of protection of the voluntary standards? If the determination is made that the customary package is deceptive, does this overrule the saving clause in 1?

Mr. ADAMS. I would ask you this question : That presently is illegal and can be moved against anyway, can it not?

Mr. SMITH. Yes.

Mr. GILLIGAN. What does deceptive mean in this case?

Mr. SMITH. The point is, though, that we are now not accused of it being deceptive. What may be generated to declare something is deceptive if this were passed, coupled with the clause which Congressman Gilligan has just read, in my judgment, and it is shared in the industry, opens up all of these standards of the past, the voluntary standards, to question every can size.

Mr. ADAMS. Then do you suggest that in this bill we have a better definition of what deception is to mean?

Mr. GILLIGAN. If the gentleman will yield again.

Mr. ADAMS. Just a second, until he answers.

Mr. SMITH. There is already law covering this provision.

Mr. ADAMS. I mean in this bill is there some question in your mind that you want the Food and Drug regulations on deception——

Mr. SMITH. They already have it.

Mr. ADAMS. Or some other statement on what deception is written into this?

Mr. SMITH. They already have authority now to act where there is deception as to the container size. They have not acted. They have agreed and concur in what we are now using. This would not, however, prohibit in the future some of our can sizes here that have been used for decades being declared deceptive and having to go through all the procedures which have been outlined. Then these would become mandatory if Commerce is unable to agree that the size be continued.

Mr. ADAMS. So what we are saying is, you are subject to that risk today?

Mr. SMITH. On all that we have.

Mr. ADAMS. On all that you have?

Mr. SMITH. Yes.

Mr. ADAMS. And so this does not increase your risk. Now if it does, then say so and we will try to give you some relief or make it right. But I do not see that it makes any difference.

Mr. SMITH. I think it does increase the concern about it and no doubt does increase the risk, because as regards these sizes we have used for long periods, we have not been accused of deception in using them.

Mr. ADAMS. All right, so if you have not been——

Mr. SMITH. But we may well be.

Mr. ADAMS. That could happen anyway.

Mr. SMITH. No. Well, as far as the can size, this cannot be barred from our use. That is what we are talking about here. As far as deception now in two containers, the Food and Drug can act now if they feel that there is deception, but they have not acted. But under this bill, if passed on container size, there could be filed complaint after complaint which could be generated for various motives that would bring this into a hearing; and it could end up with this particular can size being barred from future use. There is a definite additional risk.

Mr. GILLIGAN. The one new element it seems to me that is added here is all that we are talking about, the promulgation of regulations and so forth, following from section 5(d), follows a determination that it is difficult for the consumers to make a unit price comparison.

Now read the word "deception" in terms of difficulty in unit price comparisons. This is not deception——

Mr. SMITH. That is right.

Mr. GILLIGAN (continuing). As it has traditionally been used. It is not an attempt to defraud by short weight or anything. This is deception in terms of confusion existing in the consumer's mind.

Now, all of this apparatus follows that determination, and therefore it seems to me that this section 3 and section 1 under (f) have to be read in that context.

Mr. SMITH. That is correct.

Mr. GILLIGAN. I say again I am not an attorney and happily so because I can speak freely on this subject.

Mr. SMITH. You make a very good point.

Mr. ADAMS. I would like, Mr. Chairman, to request that the Department supply us with their position as to the meaning of this section, whether it is as Mr. Gilligan stated or whether it is in terms of the present statute that we have existing in the form of deception.

The CHAIRMAN. I want to thank you very kindly, Mr. Smith, for coming before us to contribute your views.

Mr. SMITH. Thank you very much.

The CHAIRMAN. We have others whom we have to hear if we can. You have been very patient and you certainly have expressed your views for your industry in a very fair way, I think.

Mr. Schroeter, would you take the stand, please?

Mr. Schroeter was here yesterday and gave testimony, and he has to go back, and I just wondered if any members of the committee

want to ask him any questions. One of the gentlemen who did especially is not here.

I understand my friend from Ohio, Mr. Gilligan, has a question. Does anyone else have any other questions?

Mr. DINGELL. I have several questions I would like to ask.

The CHAIRMAN. All right, Mr. Dingell.

**STATEMENT OF HARRY F. SCHROETER, VICE PRESIDENT FOR  
PACKAGING, NATIONAL BISCUIT CO.—Resumed**

Mr. SCHROETER. Yes, Mr. Dingell.

Mr. DINGELL. Mr. Schroeter, in your statement you appear to oppose, on page 14, you appear to oppose section 5(e) of the bill. For example, on page 14 you say:

The standardization rule requires that each package of each variety will weigh exactly eight ounces. Additional sizes will be needed.

Have you studied the provisions for voluntary product standardization by the Department of Commerce?

Mr. SCHROETER. You mean the Department of Commerce procedures?

Mr. DINGELL. That is correct.

Mr. SCHROETER. I have read through them. I have not studied them; no, sir.

Mr. DINGELL. Has your industry ever used the voluntary standard section which has been used by the milk products industry and——

Mr. SCHROETER. To the best of my knowledge, we have not.

Mr. DINGELL. Have you ever supported it?

Mr. SCHROETER. Up until this legislation was proposed, to the best of my knowledge we had no reason to.

Mr. DINGELL. Do you have an awareness that the industry can have a tremendous impact on the development of these standards through utilization of these devices in the legislation before the committee?

Mr. SCHROETER. Sir, when you said "standards," you are referring to standards of weight?

Mr. DINGELL. Voluntary standards.

Mr. SCHROETER. I am sorry to say I do not see the value to the consumer of standards in our industry.

Mr. DINGELL. Do you agree that under the terms of the bill and under the published procedures, technical matters involved in the manufacturing, packaging, distribution process are taken into consideration?

Mr. SCHROETER. Many things are taken into consideration; yes, sir.

Mr. DINGELL. As a matter of fact, the bill expressly requires these and other matters to be considered in adoption of the standards, does it not?

Mr. SCHROETER. That is correct. It requires consideration of many things, but as I understand it, ultimately the administrators could make the standards.

Mr. DINGELL. Now you have a number of transparent plastic containers there. Do you want to tell the committee what is the lowest and highest percentage of loose crackers in your present packaging practices?

Mr. SCHROETER. I am sorry, I do not understand the question.

Mr. DINGELL. Well, if you have a container of crackers or loose crackers packaged, are they 100 percent full or 50 percent full, or what are going to be the highest and lowest levels of fill in your industry?

Mr. SCHROETER. As I pointed out, sir, this is the line to which we now fill the package, and as my testimony showed, we need the remaining space for the machinery which closes the inner wrapper, and the machinery that then closes the top flaps.

Now if I may continue?

Mr. DINGELL. Yes.

Mr. SCHROETER. We dump these in at the rate of approximately 100 a minute, 100 packages, that is, and there is no time for the crackers to settle down, or if they do the package will bulge. Then, when the packages are later put together the crackers will break. As the packages are handled on the way to our local warehouse, and from there to the grocery store, and from the grocery store to the shopper's home, the crackers settle down. For many years we have carried a legend on the package which I would like to read:

This package is sold by weight, not by volume. Packed as full as practicable by modern automatic equipment, it contains full net weight indicated. If it does not appear full when opened, it is because contents have settled during shipping and handling.

We package as full as practicable.

Mr. DINGELL. You are getting away from the question which I would ask you, but you are getting to another one.

Mr. SCHROETER. I am sorry.

Mr. DINGELL. That is perfectly all right.

The point I want to discuss with you now is why is it impossible for the industry to get together to establish voluntary standards which would be adopted by the Secretary dealing with precisely the points about which you complain in your very excellent statement of yesterday?

Mr. SCHROETER. As I understand it, the standards would be by weight. We operate by volume.

Mr. DINGELL. All right. Now let's look at this. On page 10 of the bill, subsection 5(c), appears the following language:

The promulgation of regulations under subsection (d) (2), of this section, due regard shall be given to the probable effect of such regulations upon—

And then it gives a number of them, cost of packaging, availability of any product, reasonable range of packaging sizes to serve the consumer interests, materials used in packaging the products, and then (g) (4)—

Weights and measures customarily used in the packaging of affected products.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. Now why does not (g) (4) adequately protect your industry and the interests of the industry that you speak about?

Mr. SCHROETER. Well, sir, as you can see, and as I have testified, these crackers come in a number of different flavors and a number of different shapes, and resultingly a number of different weights.

Mr. DINGELL. I am aware of that fact.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. But it says here "the weights and measures customarily used in the packaging of the affected products."

Mr. SCHROETER. I am trying to get to that, sir.

Mr. DINGELL. You handle wheat thins. Now obviously wheat thins have been packaged in that size package for some period of time, have they not?

Mr. SCHROETER. This is at least 15 or 20 years old.

Mr. DINGELL. Now they have been packaged in that size package and they have been packaged in that weight?

Mr. SCHROETER. Yes.

Mr. DINGELL. And in that size container.

Let's take the Ritz crackers over on the end. They have been packaged in that size I guess a long time.

Mr. SCHROETER. Thirty-one years.

Mr. DINGELL. Thirty-one years.

The next one I cannot see the name, but what is the name of that?

Mr. SCHROETER. That is a pretty new fellow. He is only about 4 years old.

Mr. DINGELL. Triangles, how old is he?

Mr. SCHROETER. Triangle goes back many years too.

Mr. DINGELL. Those have been packaged in substantially the same weight and substantially the same size package for a long time, have they not?

Mr. SCHROETER. That is correct.

Mr. DINGELL. All right now, let's get over to some of these others.

Krispy and Saltines. As I remember Krispies have been in a size pack for a long time, have they not?

Mr. SCHROETER. I am not sure.

Mr. DINGELL. There are some there that you are familiar with. Let's take Cream of Wheat. That has been packaged in a size package and by that weight for a long time, has it not?

Mr. SCHROETER. It certainly has; yes, sir, 14 ounces.

Mr. DINGELL. Ever since I have been a small boy, as I recall it.

All right, now let's read this again; "the promulgation of regulations under subsection (e) (2) of this section, due regard shall be given to the regulations," measurements customarily used in packaging of affected products.

Mr. SCHROETER. Yes.

Mr. DINGELL. Now, what makes you think, with that clear language, that the Secretary or any other agency of this Government is going to rush out and write regulations which are going to completely upset those long-established packaging practices of responsible companies in the industry?

Mr. SCHROETER. Sir, as I tried to show, there is a range of weight in this size package.

Mr. DINGELL. I am aware of that.

Mr. SCHROETER. Now the topmost weights currently are 9¾ ounces, and then wheat thins at 10½ ounces. We are constantly trying to find new flavors, new shapes, and new crackers. This particular line is now 15. It has varied in different numbers and in different individual flavors and crackers over the years.

If this bill is now established, if we now developed a cracker that weighed 10 ounces in this, I am not sure that there would be the protection of the weights and measures customarily used.

Mr. DINGELL. Let's take the Ritz crackers. You said it has been used 31 years.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. I cannot believe, and I have to confess I am a member of this committee that supports this, that you would not receive the protection of (g) (4) on page 10 which we have been discussing.

Mr. SCHROETER. Well, may I point out another situation here.

Our competitor of Ritz crackers chooses not to have the same weights that we have. We pack Ritz in 8, 12, and 16 ounces. He packs his brand in, I believe, it is 6½, in 10 and in 16 ounces.

Mr. DINGELL. You and your competitor occasionally discuss problems in the industry, not in a situation that would violate the antitrust laws, but you arrive at an understanding of mutual problems, not matters that fix prices which are antitrust violations, is it not so?

Mr. SCHROETER. I would assume that some of our people would meet some of the people from the others, yes.

Mr. DINGELL. Can you tell me why you and the other companies could not get together and arrive at some voluntary standards?

Mr. SCHROETER. Well, sir, which standard would we come to; ours or his?

Mr. DINGELL. It would be a matter of negotiation, I would assume, just as it would be a matter of negotiation between you and a material supplier.

Mr. SCHROETER. If we did that, sir, then it would come down to whose expense? All our machinery is geared to this stack pack, which I elaborated on in my testimony, to pack three individual units in a 12-ounce package. I do not have it here. He happens to pack—

Mr. DINGELL. You will concede that you have changed the volumes and the weights of the packaging of products that have been produced by your company over the years, have you not?

Mr. SCHROETER. Of the ones we have mentioned this morning, we have not. There are some others, yes.

Mr. DINGELL. But others you have?

Mr. SCHROETER. Yes.

Mr. DINGELL. And you have done it using the same machinery, have you not?

Mr. SCHROETER. No, sir.

Mr. DINGELL. You mean to say that you completely rip out all of the machinery to make the package change?

Mr. SCHROETER. We have had to readjust the machinery to fit whatever the dimensions are or buy new machinery.

Mr. DINGELL. But you can readjust the same machinery, can you not?

Mr. SCHROETER. Some machinery is readjustable, some is not.

Mr. DINGELL. But if you control the question of what type of packaging you were going to establish by your own voluntary agreement within the industry, this would be a matter which you could take care of, would it not?

Mr. SCHROETER. Sir, this would affect the entire competitive picture.

Mr. DINGELL. Pardon?

Mr. SCHROETER. This would affect the entire competitive picture of the biscuit and cracker industry.

Mr. DINGELL. I understand that, but you still would be able to consider the impact upon your packaging practices in the packaging machinery, would you not?

Mr. SCHROETER. We like to believe, sir, that our packaging is superior to our competitors, and we try very hard to keep it that way.

Mr. DINGELL. I am aware of this.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. But you still would be able to consider the fact of the impact on your machinery, the impact of keeping your long-established packaging packages practices just as they are; is that not correct?

Mr. SCHROETER. We could consider it and we would find it, I think, very unsatisfactory to change, except to meet consumer needs, demands, requirements.

Mr. WATSON. Will the gentleman yield?

Mr. DINGELL. Yes; I will be happy to yield.

Mr. WATSON. I am trying to figure out just what is deceptive or confusing or unfair in the proposition that Ritz packages in 6-ounce boxes—

Mr. SCHROETER. Eight ounces.

Mr. WATSON. Eight ounces or whatever it is and another company packages in 10 ounces, if you clearly label that one is 6 and another is 8. What is unfair about it?

Mr. DINGELL. Is the gentleman directing his question to me?

Mr. WATSON. Yes, sir.

Mr. DINGELL. I am not testifying, I will say to my friend. I do not have any particular objections as to whether Ritz or somebody else happens to label their packages a particular size, but I am aware of the fact that there are circumstances where he goes into a store, for example, to buy packages of certain kinds of cereal in the same size container, which will vary rather broadly in weight. I regard that as being a particularly pernicious practice and particularly deceitful toward the consumer. That is what this bill is aimed at, not—

Mr. SCHROETER. You see, sir, I have 11 ounces of one cereal and 14 ounces of another cereal, in identical packages and to the same fill.

Mr. DINGELL. Then let's get around to the point my good friend has raised.

Let's take cream of wheat. Would you say that it was fair to the consumer for cream of wheat to be packaged in the same size container in three different stores containing three different weights at the same price, or three different weights at different prices which gave a different per unit price? Would you advocate that as being a fair packaging practice?

Mr. SCHROETER. Sir, if that actually exists on a specific product, I think there would be something wrong and someone ought to find out the facts about it.

Mr. DINGELL. Would you then regard that as a reprehensible practice?



Mr. SCHROETER. I would like to know the facts about it before I would give an opinion.

Mr. DINGELL. Let's say that you have, and let's make it very clear that I know of no practices of this kind on behalf of the packagers of cream of wheat, but let's just say that three different stores carry it.

Mr. SCHROETER. This package.

Mr. DINGELL. That size package that you have in your hand there.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. Filled to different levels and marketed at either the same price or marketed at a different per-unit price. Do you regard that as an honorable packaging practice?

Mr. SCHROETER. If it is the identical product, which I think is one of your assumptions——

Mr. DINGELL. The identical size; yes.

Mr. SCHROETER. The content is the identical product; is that correct?

Mr. DINGELL. It contains the identical product; yes.

Mr. SCHROETER. Identical product and it is filled at different levels?

Mr. DINGELL. Filled at different levels, the price is the same, or the situation comes up with different per-ounce or per-pound price.

Mr. SCHROETER. As we have said repeatedly, sir, as you know, we cannot control or influence the price at which it is put on the shelf. That is in the hands of the grocery trade.

Mr. DINGELL. I understand.

Mr. SCHROETER. The manufacturer does control the fill of the package outside of machinery or other errors. The fill of the package ought to continue to be the same.

Mr. DINGELL. We are in thorough agreement and within a reasonable degree the price ought not to vary so widely because of variances in the fill of it.

Mr. SCHROETER. The price per unit would be the price of the package divided by the net weight marked.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Mr. GILLIGAN. One quick one, Mr. Chairman.

The CHAIRMAN. All right.

Mr. GILLIGAN. First, I wanted to compliment the gentleman on the testimony he gave yesterday, which I found quite comprehensive and quite enlightening. Second, I was interested in your relation of the fact that you have used the same package for instance for Ritz crackers over the years.

We had a witness last week before the committee who was from the California State Consumer Council——

Mr. SCHROETER. I was present.

Mr. GILLIGAN (continuing). Who made the allegation that the common practice engaged in by packagers of reducing the quantity while maintaining the same price has proved an effective way of disguising from the public the rise in prices of certain commodities, primarily food?

I wanted to ask, in light of your own experience in using this same size package for years, with presumably the same weight in it, how

common is it in your experience for manufacturers of food products to change the size of the package and keep the same price, in order to conceal a price increase?

Mr. SCHROETER. I do not know that it is done to conceal a price increase. If the costs rise, and I was present when this testimony was given, and as I remember it the first case, the first package was a 37-cent seller.

Mr. GILLIGAN. Yes.

Mr. SCHROETER. I think the complaint was that the price per ounce rose 86 percent. If costs rise——

Mr. GILLIGAN. Over less than 4 years.

Mr. SCHROETER. Over 4 years. When costs rise, a marketer has many choices. One would be to maintain the same package and raise the price. At the other extreme would be to try to maintain the price and reduce the weight, and, at the same time, changing the package size accordingly, which I believe was done in this instance.

The reasons for choosing one course over another will have to do with other factors in the market, what other competitors are doing. If I am not mistaken, that instance had to do with prepared potatoes, and as I saw it, over those years the company that marketed those products had chosen to maintain what we would call a 30-cent seller. In other words, they had fixed it so that the housewife could always buy a supply of mashed potatoes or whatever it was under 40 cents, and this is perfectly reasonable. It is one way of doing it.

It would be particularly desirable if the competitive products, which would include all the other forms of potatoes, including frozen or freeze dry or all the others, were in the 30-cent price range.

The first fellow who went up into the 40-cent price range would be a daring pioneer and he might make out very well, or he might not. This is the freedom of the marketing choice just as the housewife enjoys the freedom of purchase choice by choosing among the various ways in which the potatoes are available to her.

Mr. GILLIGAN. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. I would like to just make one comment.

In that packaging, the price of 100 pounds of potatoes went up to \$30. Now if that is fair competition or fairly dealing with the consumer, I have not examined. The packages did not vary but a very little bit. They looked just about the same?

Mr. SCHROETER. I do not remember them clearly enough to comment on that, sir.

The CHAIRMAN. All I can say is what was said by the witness who was here and the amount was \$30 per 100 pounds of potatoes the price had gone up in those 4 years. That is the thing we are trying to get at.

Mr. ADAMS. Mr. Chairman, could I just ask one question?

Do you agree that up to section 5(c) (1) this is a labeling bill, and beyond that the voluntary standards with all the things we went through with the prior witness apply?

Mr. SCHROETER. Section 5(c) (1)?

There is one in here, and, as another instance of labeling I would give you—page 7, section 5(c), No. 4 there, this requirement which I

discussed yesterday on information with respect to ingredients and composition.

As I explained on foods, manufacturers already put the ingredients on the package. My query is, What more is useful and what more would anybody want, and why give to administrators the opportunity to require information over and beyond that specified in law?

Mr. ADAMS. Thank you.

The CHAIRMAN. The committee will stand adjourned until tomorrow at 10 o'clock.

(Whereupon, at 12:40 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, August 4, 1966.)



## FAIR PACKAGING AND LABELING

---

THURSDAY, AUGUST 4, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order. We have the current hearing as you know on fair packaging and labeling bills. Our first witness this morning will be Mr. Robert W. Minter of Minter Bros., Bridgeport, Pa., appearing for the National Confectioners Association.

### **STATEMENT OF ROBERT W. MINTER, VICE PRESIDENT, MINTER BROS., BRIDGEPORT, PA., APPEARING IN BEHALF OF THE NATIONAL CONFECTIONERS ASSOCIATION**

Mr. MINTER. Mr. Chairman, my name is Robert W. Minter. I am vice president of Minter Bros., Inc. We are confectionery manufacturers in Bridgeport, Pa. I am appearing in behalf of the National Confectioners Association, and as a member of the board of directors of that organization, which is the national trade association of confectionery manufacturers located throughout the United States. Our members are candy manufacturers and suppliers of goods and services to the industry. It is estimated that our manufacturer members produce approximately 85 percent of the confectionery manufactured in the United States.

This appearance is entered to express industry opposition to S. 985 and H.R. 15440, the proposed legislation, and in the alternative to urge an amendment in the event the committee should elect to report the bill notwithstanding our objections.

Reasons for opposition to S. 985 and H.R. 15440:

#### **A. IN GENERAL**

After careful study of S. 985 and H.R. 15440 and reading many statements by proponents of the legislation, we believe it is correct to state that the objectives of the bill primarily are twofold. One is to prevent fraud and deception, and the other is to authorize package size standardization—and in the case of H.R. 15440, to authorize standardization of shape and dimensional proportions.

Certainly every honorable person is opposed to fraud and deception and if there were not already adequate Federal legislation to deal fully

and effectively with fraud and deception, our industry along with all other industries would readily urge it. However, Federal law is already fully comprehensive to deal effectively with fraud and deception. Both the Federal Trade Commission Act and the Federal Food, Drug, and Cosmetic Act may be used to prevent fraud and deception. We are not convinced that the law has always been fully enforced, but it should be and certainly it could be.

The other objective of the bill ~~seemingly~~ is product package size standardization—and in the case of H.R. 15440, to authorize standardization of shapes and dimensional proportions. It is on this point that we are in disagreement with the objective of the bill. We are opposed to the Federal Government dictating package sizes, shapes, and dimensional proportions. It is contended that there are abuses by unscrupulous manufacturers. Whatever law may be in effect, there is little question that there will always be some individuals who will attempt to be abusive. Proponents of the bill frequently have been heard to say that most manufacturers are honest and scrupulous and that they along with the public should be protected from the unscrupulous. Legitimate, scrupulous, and honorable manufacturers who have a prime interest in operating profitable ventures and thereby pleasing the consuming public, are not voicing support for Federal legislation to attempt to reach such unscrupulous manufacturers, who all of us agree are few. This is because any sensible businessman knows that honesty is the best policy, that quality and value are what sell a product, and that there is no danger of an unscrupulous manufacturer being successful very long. The marketplace takes care of the unscrupulous.

It is urged by the legislation's proponents that package standardization is needed to enable the consumer to make a rational choice between various products. Such a contention presupposes that price and package size are the only elements which a consumer need consider in order to make a rational decision. Such a thought is a most depressing one to cast upon our free enterprise society. Standardization of package sizes, shapes, and dimensional proportions would be a tremendous wet blanket on packaging improvements, creativeness, and imagination. We subscribe wholeheartedly to the view advanced by Representative Catherine May that the Hart bill assumes the manufacturer's culpability, the consumer's gullibility, and the bureaucrat's infallibility.

#### B. AS PARTICULARLY APPLICABLE TO THE CONFECTIONERY INDUSTRY

Even though I have explained that the confectionery industry is opposed to this proposed legislation, if I am not successful in convincing you not to report the bill, and we are certainly hopeful that you will not report the bill, then we would like to ask you to consider amending the bill before it is reported.

As you know, there is a provision in both bills prohibiting the promulgation of a regulation establishing "any weight or measure in any amount less than 2 ounces." We believe that the problem of the confectionery industry regarding package weights may have had some bearing upon this provision being included. It is of very limited significance to the confectionery industry as now provided, but it

would be of genuine significance if it were provided that no regulation should establish any weight or measure in the case of confectionery in any amount less than 1 pound.

For many years in the lower priced confectionery items it has been the practice of manufacturers and the obviously strong preference of consumers, to purchase these confectionery items at retail for amounts compatible with our coinage system. I have reference to confectionery items retailing at 5 cents, 10 cents, or 15 cents. While the 2-ounce restriction in the bill at present would cover the 5-cent retail products, it would not be fully protective in the case of 10-cent or 15-cent items.

In order to sell confectionery items at 10 cents or 15 cents, manufacturers must adjust the weight of the item upward or downward from time to time to reflect differences in production costs. This is due primarily, but not entirely, to wide variations in raw material costs. For example, last year the price of cocoa beans was as low as 11 cents per pound. It has been in excess of 70 cents per pound. The price of sugar today is about 10 cents per pound. In 1963, however, it reached 16 cents per pound. I could also give you examples of wide price fluctuations in the case of almonds, filberts, walnuts, pecans, peanuts, and so many other ingredients used by the industry.

In our testimony before the Senate committee, we presented charts which indicated the wide price fluctuations over the years of many of the commodities that we use as raw materials.

In the case of an item in which almonds and chocolate are the principal factors, a wide variation in price of either of these raw materials necessitates a change in the weight of the item in order for the retailer to continue to sell it at 10 cents or 15 cents. If the item involves primarily sugar and peanuts, the price of these raw materials is critical in determining the weight if the retail price to the consumer is to remain at 10 cents or 15 cents. Most frequently, the changes in package weights are in terms of one-eighth of an ounce, although weight changes of one-sixteenth of an ounce are not uncommon. If the price of a raw material commodity continues to move in a particular direction, and for a substantial amount, then there may be successive one-eighth ounce package weight changes.

If there were to be an attempt at standardization of confectionery package weights for items weighing say less than 4 ounces, it is presumed that it would be in terms of 1 ounce or even one-half ounce. In either event, this would dictate a revising of the packaging practice of the industry which results in the products being priced so as to facilitate transactions because of the absolutely enormous amount of transaction involved in the retail sale of confectionery items priced at 10 cents or 15 cents. Let me elaborate. There are many millions of confectionery items sold annually at 5, 10, or 15 cents. Our customers are accustomed to using the exact change to buy these items in vending machines, at newsstands, cigar counters, drugstores, and many other retail outlets. It would not be conducive to sales, or convenient for the retailer or the customers, if these product prices instead of being standard 5, 10, or 15 cents were forced to be, because of package weight standardization, 7, 9, 11, 14, or some other odd cents price which would require the use of pennies in each transaction. It would just be too

much of an inconvenience to the consumers and to the retailers. Also, many more pennies would be required by our coinage system.

If our request for limiting package weight designations is not adopted, here is what could happen in the confectionery industry to the disservice of the consumer. Let us assume that confectionery items weighing less than 4 ounces but more than 2 ounces were ordered to be standardized in terms of one-half an ounce. Further let us assume that a particular manufacturer was currently producing an item weighing 2 ounces, his ingredient costs had become lower, and he would then under current practice increase the weight to  $2\frac{1}{8}$  ounces. If the commodity price decline continued, the package weight then might increase to  $2\frac{1}{4}$  ounces, or  $2\frac{3}{8}$  ounces. However, if package weights were standardized at one-half ounce intervals, he could not pass this saving on to the consumer unless there should be a sufficient drop in commodity prices to allow him to increase the weight from 2 ounces to  $2\frac{1}{2}$  ounces.

An increase in certain commodity prices could also work to the disadvantage of the consumer. For example, assume that a particular item were packaged in a  $2\frac{1}{2}$ -ounce weight and commodity price increases forced the manufacturer to reduce the weight of the item. He would not be permitted to reduce the weight one-eighth of an ounce or one-fourth of an ounce, but he could only reduce it from  $2\frac{1}{2}$  ounces to 2 ounces and he would be doing so to comply with a governmental edict and not because such a package weight reduction were justified from an economic standpoint. The consumer would be the loser, both on the upswing and on the downswing of commodity prices should we have product weight standardization.

I have a number of samples here which I would just like to take a minute to show you, all well known items, which I think will perhaps illustrate my point. Here is a 10 cent Mounds bar, which is currently  $2\frac{1}{16}$  ounces. If we had standardization, this would immediately have to go to 2 ounces. In this particular case the consumer would be the loser to the tune of one-sixteenth of an ounce. Here we have a 15 cent bar,  $2\frac{3}{4}$  ounces. This would have to go to  $2\frac{1}{2}$  ounces. He couldn't make it 3 ounces without losing money.

Baby Ruth,  $2\frac{1}{4}$  ounces would have to go to 2 ounces under standardization, and could not go to  $2\frac{1}{2}$  ounces unless there were a very, very substantial raw material price decrease to enable him to economically do so. He couldn't go to  $2\frac{1}{4}$ ,  $2\frac{1}{8}$ ,  $2\frac{3}{8}$ .

Here is a Payday bar,  $2\frac{1}{4}$  ounces. It would have to go to 2 ounces and the consumer would be the loser.

I think here is a perfect example. You see here we are dealing with a different set of circumstances. We are not talking about a fellow making  $7\frac{1}{4}$  ounces for 33 cents and another fellow making 9 ounces for 37 cents, and that is tough to figure out. We are talking about establishing retail price. It is 10 cents, it is 15 cents. It is not 9 cents and 11 cents and so forth. It is very easy under the established price system for the consumer to make weight comparisons and, therefore, to determine the value. Of course, there are other things in their determination other than the price and the weight.

But here is a perfect example to establish the fact that this is industry practice. I have here a number of 10 cent bag items made by



a well-known manufacturer. Now these all sell for 10 cents, every one of these. Yet, in this particular item the weight is  $2\frac{3}{8}$  ounces, in this other item it is  $2\frac{1}{2}$  ounces, and in this third item it is  $2\frac{1}{8}$  ounces. These are all different weights for each different item to reflect the different processing costs of the manufacturer. He gives as much to the consumer as he possibly can, because if he doesn't, let's assume that here he is giving  $2\frac{3}{8}$  ounces, and another manufacturer sees his way clear maybe to give  $2\frac{1}{2}$  ounces; well, the fellow is going to lose sales on this, because we have a very competitive industry, and the consumer is very perceptive we find in picking these things out rather quickly. But this does illustrate, I think, the fact that we do change weights based on our raw material costs.

Let me give you a little case history.

The CHAIRMAN. May I interrupt?

Mr. MINTER. Yes, sir.

The CHAIRMAN. I notice that in the case of your candy bars you had several different brands. I notice that in the case of these cellophane packages of candy that you have here, every one of them is a different type of candy.

Mr. MINTER. Yes, sir.

The CHAIRMAN. I don't believe this bill is trying to change present law where different brands are involved.

Mr. MINTER. Well, perhaps that is so, and I certainly believe that is the intention of the law.

The CHAIRMAN. I don't think it is the intent of this Congress or of the Committee on Commerce to have one brand conform to other brands.

Mr. MINTER. I think what is disturbing to us, that as we interpret it, there is the authority in the bill to standardize package weights. Now this might not be the intention of the committee or the Congress at this time, but I like to think of myself as a relatively young fellow, and I have a number of years hopefully left in the industry, and I would like to think that 10 years from now, when perhaps an administrative official hasn't had the benefit of this discussion, that perhaps he might take a different view, and I would hope that the authority would not be there for him to take a different view. The bill does grant this authority.

Just one further example if I may, to show the variations and to show that this is a case of industry practice. I have here a Hershey bar, a 10-cent Hershey bar. In 1957 the weight of this product was an ounce and three-quarters. In February of 1958 there was an increase in raw material prices. It went to an ounce and a half. But in July of 1960 it went up to 2 ounces, and in 1963, when sugar prices went so high, it had to go back down to an ounce and three-quarters, but presently right now it is back up to 2 ounces.

The same situation applies here with Mr. Goodbar. In 1957 it was 2 ounces, went to an ounce and a half in 1958, went to two and a quarter, up to two and a quarter ounces from an ounce and a half in 1960, then to two and an eighth and presently to 2 ounces.

Mr. FRIEDEL. All selling at the same price?

Mr. MINTER. All 10 cents; yes, sir. This is exactly our point. The price doesn't vary. It is always 10 cents or 15 cents.

The CHAIRMAN. The consumer knows what he is buying when he buys the Goodbar.

Mr. MINTER. That is right.

The CHAIRMAN. There is no confusion.

Mr. MINTER. No, there is no confusion.

The CHAIRMAN. Go ahead.

Mr. FRIEDEL. You are only worried that the bill would prevent you from making such changes in weight.

Mr. MINTER. That is correct.

Mr. FRIEDEL. You are worried about that.

The CHAIRMAN. Go ahead.

Mr. MINTER. From this explanation you might respond by stating "under those circumstances perhaps confectionery items would not be standardized." Perhaps these items would not be standardized, but they could be standardized; and the best way to assure that standardized weights would not be decreed would be your not giving the authority to administrative officials.

Confectionery items selling at retail for 10 cents or 15 cents are not the only items which the industry packages in weights requested by retailers so they in turn may price the items to be attractive to retail customers. Another category is the 29-, 39-, 49-, and 59-cent bag items normally found in the supermarkets. The weights of these packages must be adjusted upward or downward if commodity prices vary to permit retailers to offer the packages to consumers on a basis which consumers find attractive. Just as consumers prefer to purchase the small-sized confectionery items, which for the most part are vending machine, drugstore or newsstand items, for 5, 10, or 15 cents, the housewife has shown a definite preference to purchase food store confectionery products, which for the most part are larger sized confectionery items, when priced at retail for 29, 39, 49, or 59 cents. So again we have established a constant price situation, not going all over the lot.

The following is another illustration of the type of problem which could occur: Let us assume that the Government should standardize candy packages in weights above 8 ounces at intervals of 2 ounces and that there is a product packaged for a specialty store weighing 12 ounces which the store likes to sell for a dollar. If raw material costs should increase or decrease, current practice would permit adjusting the weight of the package from 12 ounces to 11 ounces or from 12 ounces to 13 ounces, which the specialty house finds desirable rather than changing the price from a dollar to \$1.10 or from a dollar to 90 cents. However, governmental dictation as to package weights would disrupt practices of this nature, which are popular with the retailer and the consumer.

I have with me today a confectionery package product by a well-known manufacturer weighing  $10\frac{2}{3}$  ounces. You will note that it was manufactured for sale by the Camp Fire Girls for fund-raising purposes. The package is priced at \$1. This \$1 price is virtually mandatory because the girls, in selling the box from door to door, understandably, are not equipped to make change such as would be required if the package were to be sold at 78 cents, 93 cents, \$1.04, or some other odd amount. If confectionery packages were standardized in terms of even ounces, it is obvious what the result would be in this case.

The manufacturer is giving the Camp Fire Girls organization as much candy as he can afford to give the organization and still let the package be sold at \$1. With the practical circumstances requiring this package to be sold at \$1, if the Government should then require the product to be packaged in even ounces, then obviously it would be a 10-ounce package instead of a 10 $\frac{1}{4}$ -ounce package. Here again the consumer would lose.

Confectionery consists of a wide variety of products as you have seen in those 10-cent bag items. We have caramels, fudge, jellies, on ad infinitum. In addition to our other objections which I have outlined, obviously it would not be reasonable to standardize weight size for marshmallows on the same basis as peanut brittle and jelly beans or as gum drops, and yet if there were an attempt to adopt different package weights for each of the many different confectionery products, the proliferation would be almost endless.

The only amendment which we believe would cover problems of the type I have outlined would be one providing that provisions of the bill regarding package weight standardization should be limited in their application to confectionery. Both S. 985 and H.R. 15440 provide that no regulation promulgated with respect to any consumer commodity may "establish any weight or measure in any amount less than two ounces;". We proposed to eliminate the semicolon after the word "ounces" and add the words "or if it is confectionery less than one pound."

#### CONCLUSION

We will very much appreciate the committee's consideration of the industry position on this proposed legislation and are hopeful that our recommendation that the bill not be reported will be accepted, but if not, that the proposed amendment to which I have made reference will be adopted.

The CHAIRMAN. Thank you, Mr. Minter. I think you have been very enlightening. I have these candies here in front of me and I want to get them back down there. I can see what you are apprehensive about, but let me give you the main provision of this bill with respect to sizes and weights.

First, there must be a determination after full hearing and this is a hearing where everybody has a chance to have his say—that sizes and weights are so confusing that price comparisons are impossible. If it is determined after a full hearing, that the price comparisons are impossible, I think it would be fair to say that something must be done, and you would probably come up with some provisions like these, if you were in our shoes or maybe in the housewives' shoes. But we don't want to hurt the industry or the manufacturers at all. We want to be fair, but we have got to be fair to both sides.

Mr. MINTER. Yes.

The CHAIRMAN. Next, voluntary standards then are worked out with industry participation in Department of Commerce procedures. That is voluntary. In such proceedings, representatives of all the candymakers of the land would participate to develop standards to eliminate the confusion so that the consumers can make price comparisons.

Mr. MINTER. What I was trying to point out, sir, is that we have somewhat of a different set of circumstances here.

The CHAIRMAN. I know.

Mr. MINTER. In that there is not price confusion. It is 10 cents.

The CHAIRMAN. I agree.

Mr. MINTER. Or it is 15 cents, and if there were standardization, then—

The CHAIRMAN. We are not talking about standardization, not at all. We are talking about doing away with a lot of this confusion and being fair to the consumers of the land.

Mr. MINTER. Yes.

The CHAIRMAN. We are not trying to standardize.

Mr. MINTER. We certainly appreciate this.

The CHAIRMAN. Third, if efforts to agree on voluntary standards succeed, then it is hoped the industry will voluntarily comply with those standards. If industry, however, fails to adhere to the standards, then the agencies may adopt the standards as regulations and enforce them.

If efforts to agree on standards are unsuccessful, then the agencies conduct formal proceedings in which they will receive comments on proposed regulations. After studying the comments, they will adopt regulations which may be challenged in the courts to see whether they are legal. This gives every person the right under the Constitution to go to court and say, "I have been mistreated and wronged."

Mr. MINTER. I appreciate your explanation. I am sure the intention is that. Our concern is the fact that the authority is there to standardize weights, and I think probably we might agree that over the years administration officials do have somewhat of a tendency to accept the authority that is bestowed upon them.

The CHAIRMAN. Let me tell you that, in the case of every one of these labeling laws that has ever been before this committee, the same objections have been raised on all of them. Yet, they have been very successful, every one of them. If you weren't a different person, I would say you were giving the same speech that was given on every one of those labeling laws.

But they are working successfully, aren't they? They were enacted for the benefit of the people of this land. This committee is trying to be helpful to all. We want to protect the manufacturers' right and we don't want to standardize everything and insist that everything must be packaged the same. That is not at all our purpose, and it won't be done.

I have outlined the four steps in the procedure that must be followed and, finally, if you are not satisfied, you have access to the courts of this land. I think that you will never have to go there. If we pass the bill out and something goes wrong we can come back and take another look at it.

But the time has come, and I will tell you this is the feeling all over my district—I don't know about the rest of the Congressmen—but in my district they say, "Let's get something."

Mr. MINTER. Yes, sir, I have agreed in certain instances something is needed; there is no question about that. We are hopeful that our amendment will be adopted by the committee.

The CHAIRMAN. Your proposed amendment will be given consideration, exempting candy less than 1 pound.

Mr. MINTER. Yes, sir; "or if it is confectionery less than 1 pound."

The CHAIRMAN. We will give it consideration. I want to thank you for coming here and giving us the benefit of your views. I don't want to be left with this candy. I will give it back to your assistant if he will come up here.

Mr. Friedel.

Mr. FRIEDEL. Mr. Minter, I want to compliment you on a very fine statement. I was interested in your statement on the coin machines where the price is 5, 10, or 15 cents. My own belief is that I think you are unduly alarmed. I don't think this bill will affect you and maybe we will adopt your amendment, I don't know.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Divine.

Mr. DIVINE. No questions.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. I have no questions.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. What percentage of the candies sold are from vending machines? Did you cover that in your statement? I missed part of it.

Mr. MINTER. No, sir, that isn't in my statement. I have here the publication "Confectionery Manufacturers' Sales and Distribution, 1965." Bar goods and 5 and 10 cents specialty items, according to this survey, which are the kinds of categories to which I was referring in mentioning vending machines and cigar counters where nickles and dimes are mandatory, in 1965 comprised 44.5 percent of the total dollar sales of the industry manufacturers.

Mr. NELSEN. In other words, it would be very important that certain standard sizes be not made a rule, in view of the fact that there may be variations as to cost of items that go into a candy bar. In other words, you couldn't maintain a 5-cent or 10-cent or 25-cent level.

Mr. MINTER. Absolutely. That is my whole concern. We do have to vary weights because we deal with widely fluctuating raw material prices. On the upswing and on the downswing of these fluctuations, if we had weight standardization, the consumer would be the loser.

Mr. NELSEN. I see. Now it is mentioned by our good chairman that if action were brought, it could be challenged in the courts. I would agree if everyone was as fair as our chairman I wouldn't have anything to fear. I have had some personal experience with people in governmental positions, however, that are rather frightening at times. There is a very great appetite to exercise power, and this exercise can be abused.

Now I am still pursuing the cease-and-desist idea that I have been talking about. It is my understanding that if in the judgment of authorities involved they find that the regulation has been violated, you have recourse in the courts, of course, but you are ordered to cease and desist until you prove that you are not in violation, and the burden of proof is on the producer. I would like to refer to and introduce in the record a statement that was made at the 59th Annual Convention of American Wholesale Grocers. I have a copy of a telegram which

quotes from the March 15, 1965, Supermarket News, referring in part to a statement by a gentleman from Amsterdam, the Netherlands. He referred to this particular type of legislation and he said:

Europeans still shudder at the effect of the planned economy which hampers private industry. Competition in the United States is fiercer than anywhere else but it has worked well. Don't hinder it. Just supervise it, and if the manufacturer or retailer is using improper methods, he will be discovered and soon out of business.

"We have no differences of opinion on this," Mrs. Peterson is quoted as having answered.

(The telegram referred to follows:)

[Telegram quoting from Supermarket News, Mar. 15, 1965]

"Mrs. Esther Peterson took special pains Tuesday to impress on the food industry that she is not an ogre. Speaking here at the 59th annual meeting of the National American Wholesale Grocers' Association, the Special Assistant to the President for Consumer Affairs stressed, time and again, that she has the highest respect for the industry's accomplishments, understands its difficulties, and has no intention of upsetting its applecart. Whether President Johnson's consumer adviser was able to persuade the crowded gathering of wholesalers and manufacturers of her good intentions could not be ascertained. Her remarks drew polite but not enthusiastic applause. On the other hand, it was obvious that whatever her intentions, many in the audience fear the consequences of her activities. This was concluded from the standing ovation which greeted a virtual plea for unfettered free enterprise made from the audience.

"Interestingly, this plea did not come from any of the American food executives attending, not one of whom objected to Mrs. Peterson's contentions during the question-and-answer period. Instead, it was made in a courtly manner by Robert Van Schaik, director general, Union Vege Europeenne, Amsterdam, the Netherlands, who had preceded Mrs. Peterson on the Speaker's rostrum. 'I don't know the power of your office,' Mr. Van Schaik said, 'But I implore you to use it as wisely as you've spoken. Europeans still shudder at the effects of a planned economy which hampers private industry,' he continued, 'competition in the United States is fiercer than anywhere else, but it has worked well. Don't hinder it, just supervise it. If a manufacturer or a retailer is using improper methods he will be discovered and soon will be out of business,' Mr. Van Schaik concluded. 'We have no difference of opinion on this,' Mrs. Peterson answered. 'Our tremendous distribution system has been responsible for the high standard of living in this country,' she said, 'I have no intention of stifling or changing anything.'

Mr. NELSEN. I want to assure the gentlemen that this committee certainly wants to maintain the fierce competition in the United States, and I hope our legislation when we get through with it—I am sure the chairman would agree—won't disturb that.

I thank the gentleman for his testimony. I think it is very important, in view of the fact that the candy industry does a great amount of their business through vending machines, that there must be some flexibility to take care of costs that may vary, in order to maintain a standard price, as properly marked. Thank you for your fine testimony.

Mr. MINTER. Thank you very much, Mr. Nelsen.

(Off the record.)

Mr. MINTER. I might say, I, too, was greatly concerned with the testimony that I heard from the Federal Trade Commission witness. As I interpreted what he said, if he finds a violation now he has got to prove it in the court. The person is innocent until proven guilty. I assume this bill gives him authority to the effect that, "When I say

you are guilty, you are guilty and you have to come to me and prove you are innocent." I think this is a reversal of the standards in this country.

The CHAIRMAN. I might say that this committee wouldn't pass any legislation providing for arbitrary standardization. I would put the wisdom of these 32 members besides myself on the committee against any such proposal.

Mr. NELSEN. For the record, I am going to clear up a point which has been disputed up until now relative to an example that was shown which pointed out that the quality and the content of the two packages that were compared are not identical.

When Mrs. Helen Nelson, consumer counsel for the State of California, appeared before our committee, she listed the retail price, quantity, and price per pound charged for an unnamed instant mashed potato from before January 1962 through June 1965, a period in which four package changes occurred.

Mrs. Nelson's charges assume that all reductions in weight are for the purpose of masking price increases. In point of fact, the reductions of which she complains were part of a highly successful program to improve the quality of the product.

In the past, there were only two forms of instant mashed potatoes—granules and flakes. Serving declarations on products already on the market indicated a serving to be approximately one-half cup, the same size serving recognized by the U.S. Department of Agriculture as an average serving. Unfortunately, the granule-type product failed to please the consumer, as shown by the low sales volume. To correct this, several formula changes were made, adding emulsifiers and for awhile dry milk products and later an improved form of granule. Each change indicated an improved product but at different weight levels. Each package contained "eight servings" according to accepted definition, although the net weights varied, 7.2 ounces, 7 ounces, 6 ounces, and 6.5 ounces.

About a year ago, the research people came up with instant mashed potato puffs, a new form of instant mashed potato product which yielded a lighter and fluffier mashed potato, free of heavy lumps. These potato puffs are a lighter, less dense product than the traditional granules and flakes and as a result had different and improved properties. A smaller quantity by weight would make a lighter, fluffier serving as measured by the traditional 1/2-cup serving. Thus, a lower weight package of the new product provides the eight 1/2-cup servings declared on the package label.

Mrs. Nelson's position in this matter is typical of the great difference that exists between the consuming public and the thinking of people like Mrs. Nelson who purport to speak for the consumer. Mrs. Nelson thinks in the 19th century bulk grocery terms of cents per ounce and pound. To her, weight is all important. But the other 99 percent of the people, think in terms of total quality, which they do not equate with weight.

Mr. CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. I just have one question, Mr. Chairman. I think it applies to all the people who have come here to protest passage of this legislation. I think if you look carefully on page 7 of the bill,

section 5, it only goes, the standardization as the opponents of the bill keep saying, to that which is likely to deceive retail purchasers. Therefore, as was said before, I think you are looking for bogeymen under the rug that aren't there, because if the manufacturer—I know of my own knowledge that the candy industry is a very good one and a well-run one.

Unless there is intention to deceive, this bill would have no application, and, therefore, it seems to me that you are protesting something that doesn't exist.

Mr. MINTER. I certainly hope you are right, Mr. Macdonald.

Mr. MACDONALD. Just look at the language. That is what the language says.

Mr. MINTER. I believe our industry would rest a lot easier if our amendment were adopted, sir.

Mr. MACDONALD. I know that you have good counsel and I know you have got good representation, but if you just look at line 13 on page 7, I think that takes care of all your problems. Therefore, I don't see why you are concerned, because only those people who are packaging things in sizes, shapes and proportions which are likely to deceive—and I don't think this is true of 99.44 percent of the manufacturers of candy. Therefore, why should you protest something that isn't going to affect you?

Mr. MINTER. I might use another example to perhaps answer that question, sir. I have been talking about brand name items here by large manufacturers. Our industry is characterized by a relatively few number of large manufacturers, and many, many, many small manufacturers.

We are a small manufacturer. We don't have name brands. We don't have a big advertising budget. We don't have all kinds of promotional activities that can in a sense force the sale of our product at the retail counter. In lieu of that, we have to find a position for ourselves as do many other smaller manufacturers in the marketplace, through other means.

We have to use ingenuity. We have to use creativeness. We have to try new channels of distribution to try to get sales. I am sure that you recognize that constantly increasing sales are a must for any company today, just as profits are a must.

I think this answers somewhat your point. This product I have in my hand happens to be a product which we manufacture. Now there is no attempt to deceive here. As a matter of fact, this product is sold through a particular channel of distribution where it is pre-sold. It is sold actually door to door by milkmen. There is nothing confusing about it. The consumer knows exactly what he is getting. The price is there, the weight is there, no question about it. This is 10 ounces.

I make no bones about the fact that it is priced higher for 10 ounces than a bag which went through a wholly or fully automatic process. But we had to develop this kind of product to find sales.

Perhaps hard candy might be standardized at a pound. If so, we couldn't make this product.

Mr. MACDONALD. I think everyone is going under the assumption that the FTC or somebody is going to be very unreasonable, and



certainly it is not the intent of this member of the committee, nor do I think of any others, to permit any agency to be unreasonable. Therefore, if you have to charge more because it is more attractively packaged, I think it would be unreasonable for the FTC to say, "No, you can't do that." I don't think they would do it. Certainly there has been no testimony that would indicate that that is what we want to do.

Mr. MINTER. The authority is granted to do these possibilities and we think we have a valid case to have our amendment fully considered.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman. Mr. Minter, I am very glad you have testified today because I must confess that the possible effect of this proposed legislation on the candy bar industry is something I, at least, hadn't considered at all.

Could you tell us what percentage of the candy industry is in the candy bar field as against the packaging of candy in 1-2-, and 5-pound boxes?

Mr. MINTER. Yes. The bar sales and 5 and 10 cent specialty items comprise 44.5 percent of total sales. This is according to the survey I have here entitled "Confectionery Manufacturers' Sales and Distribution, 1965," by the Department of Commerce. It was 44.5 percent of the total.

Mr. CURTIN. You have indicated, I believe, that the candy bar industry has ascertained that these candy bars be sold in multiples of fives, that is 5, 10, 15 cents, something like that.

Mr. MINTER. Yes, sir.

Mr. CURTIN. Now I recall that in vended cigarettes, that sometimes the price is not in multiples of 5 cents, getting a package of cigarettes, but that the industry had pennies inside the cellophane packages in the form of change. Has that ever been considered for the candy bar industry?

Mr. MINTER. Fortunately, the cigarette manufacturers had a piece of paper on top of their package and overwrap them by cellophane and they put the pennies in between that. I think the Federal Food and Drug—we don't usually have a double wrap. We have a piece of candy in cellophane. I think perhaps the Food and Drug Administration would have something to say about our putting coins in the same package as the candy, not only because it would contact them, but maybe there is the danger of a child not recognizing there is a couple of cents in there and plunking the pennies in their mouths by mistake too.

Mr. CURTIN. So that if the weight was standardized in candy bars, which would result in a price of, say, 6 or 4 cents, it wouldn't be practical to put the change from 5 or 10 cents in the candy bar.

Mr. MINTER. I just don't see how we could do that.

Mr. CURTIN. I notice you have another box in front of you. It that a pound box of candy? Do you also package that type of candy?

Mr. MINTER. Yes. This is another item that we manufacture. Again, perhaps this might serve to answer Mr. Macdonald's question. The bill gives the authority to not only standardize weights but to designate package sizes, too. So let's assume that 1 pound of hard candy were standardized in a package 3 by 4 by 6 inches. Now this

is a pound of hard candy. I have here in my hand. It is a very attractive item we think. It is a table decoration at Christmas time which can be reused. It can be a nut holder or a card holder or a cookie holder.

Nobody is being deceived by how much candy is in here, and all the advance sale literature says it is a pound. But it is a lot bigger box than a pound of hard candy would normally go into. The authority is given to outlaw perhaps such packaging. This is the way we get business. We have to come up with ideas, because we can't compete on a brand name basis.

MR. CURTIN. Is there a label anywhere on that package indicating what is the weight of the enclosed candy?

MR. MINTER. Oh, yes, 1 pound net weight. This again is presold through flyers here, the price, the weight, and everything being clearly stated.

MR. CURTIN. Thank you, Mr. Chairman.

MR. FRIEDEL (presiding). Mr. Van Deerlin.

MR. VAN DEERLIN. No questions.

MR. FRIEDEL. Mr. Harvey.

MR. HARVEY. Thank you, Mr. Chairman. Mr. Minter, are there any other comparable products that would be faced with the same problem as the confectionery products? Are there any other small items such as this? I am thinking in terms of this committee's consideration. Can you think of any other ones that are in small sizes that would all fall in the same category?

MR. MINTER. I can't think of any right offhand, although I would say that possibly there are. Maybe snack items perhaps.

MR. HARVEY. What?

MR. MINTER. Snack items, peanuts.

MR. HARVEY. Those that are dispensed in the vending machines, crackers with peanut butter perhaps?

MR. MINTER. I don't know what their industry practice is. I am stating what the candy industry does, and this would be a very, very serious blow to our industry if we had weight standardization. I don't know if there are other industries that have the same kind of problem as we do or not.

MR. HARVEY. Would crackers and so forth be covered by your exemption? They would not, would they? Are they considered to be confectionery items?

MR. MINTER. No, sir.

MR. HARVEY. They would not be covered by your exemption. So your exemption would not be broad enough to cover anything other than your own particular product.

MR. MINTER. No, our amendment as suggested would say, "or if it is confectionery less than 1 pound."

MR. HARVEY. Tell me, Mr. Minter, what share if any of this market do imported products have? In other words, are you faced with competition from European countries, from candies being imported and so forth?

MR. MINTER. Yes, this is very strongly on the increase.

MR. HARVEY. And how would this bill affect the manufacturers in foreign countries? Would they have to comply as well, shipping their products in the same sizes as we specify?

Mr. MINTER. If they ship here they would have to comply.

Mr. HARVEY. I have no further questions. Thank you.

Mr. FRIEDEL. Thank you. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman. Mr. Fred Sealy, one of your members, of the Johnson-Fluker Candy Co. in my district, told me not to miss your testimony and I am glad I didn't because I learned something from him and from you, and that is the fact that the candy bar fluctuates up and down and not just down. I thought it was just shrinking on account of inflation.

Mr. MINTER. There is no question that happens when there are rising costs but I think the example I stated in the case of Hersheys, for example, when economics justify it, it goes up.

Mr. MACKAY. It seems to me that your testimony is a perfect illustration of the desirability of acquainting the committees of Congress with a particular industry problem, because as I see it, the coin vending factor in your business is unique and deserves very careful and special consideration.

Mr. MINTER. Thank you.

Mr. MACKAY. I would say, though, that my wife has explained to me that candy is very deceptive in terms of the number of calories. You had better look into this bill and see if it wouldn't permit labeling on that score.

Section 3 and section 4, Mr. Minter, seem to me to be the positive part of this bill. These sections require certain things to be done. Section 5, the additional regulation section, may be something that is going to be done. Could you state for your association whether there is anything in sections 3 and 4 of this bill, any requirement regarding labeling which you think is not justified or presents any particular problem to your industry?

Mr. MINTER. I can't say positively in regard to this. Our concern is with section 5, and I would have to reread carefully sections 3 and 4.

Mr. MACKAY. Since there are really two different approaches, it would be helpful to know whether there is any possible objection to the labeling requirements.

Mr. MINTER. I don't believe sections 3 and 4 are of primary concern. Our concern is with section 5.

Mr. MACKAY. As a practical matter it is pretty much of a restatement of existing law; isn't that true?

Mr. MINTER. Yes.

Mr. MACKAY. You are required to put the purchaser on notice as to content, weight, and so forth.

Mr. MINTER. Yes.

Mr. MACKAY. Now with regard to the 2-ounce feature, I suppose you refer to page 9 of the House bill, Mr. Staggers' bill, H.R. 15440.

Mr. MINTER. Yes, sir; subsection 2, line 16. Presently it is any amount less than 2 ounces. As I pointed out in my testimony, that covers nickel bars. It does nothing for 10-cent and 15-cent items.

Mr. MACKAY. And as I understood from Mr. Sealy and from your testimony, the objection to 2 ounces is that there are tolerances within 2 ounces, up or down.

Mr. MINTER. Yes.

Mr. MACKAY. Which would operate.

**Mr. MINTER.** Yes, a lot of these are hovering up and down around 2 ounces. For instance, here are two packages which retail at 10 cents each. I didn't mention this. These two packages are chocolate items and chocolate is the most expensive ingredient—these wouldn't be affected at all because they weigh less than 2 ounces, but yet all of the others would be affected. But, they are all 10 cents.

**Mr. MACKAY.** I am sure you followed this legislation through the other body, and I wondered if you could state what their case was for choosing this particular arbitrary figure of 2 ounces?

**Mr. MINTER.** I think probably it is involved with Life Savers. I think there is some reference in your proceedings there where they would outlaw the hole in the Life Savers. I think that point was considered, but unfortunately they only considered the nickel situation and didn't go far enough, because the larger unit items weren't considered.

**Mr. MACKAY.** Do you know what case the proponents advanced for the 2-ounce figure, why they would not establish any weight or measure in any amount less than 2 ounces?

**Mr. MINTER.** No, sir; I don't.

**Mr. MACKAY.** One other thing that interest me about the packaging of candy. You buy an attractive boxed candy such as you have there. Under an extreme interpretation of the regulation, and this is always possible, you might have an administrator who said you can't have any false bottom in your box of chocolates or you can't use the type of device you have there which is very attractive. You didn't mention that as a possible abuse of this.

**Mr. MINTER.** Yes, that is certainly possible.

**Mr. MACKAY.** It seems to me that the point you have made is very well taken and I would share Mr. Harvey's interest in knowing whether there are other people involved with the coin machine situation other than candy manufacturers? But we can ask the staff to look into that.

Thank you very much.

**Mr. MINTER.** Thank you, sir.

**Mr. MACKAY.** No further questions.

**The CHAIRMAN.** Dr. Carter.

**Mr. CARTER.** In your packages I notice you are fearful that the size of your packages which vary with the cost of the ingredients may be interfered with by this act. Certainly, I can understand that, but would you have any objection to a label on the package stating exactly the number of ounces?

**Mr. MINTER.** It is on there presently.

**Mr. CARTER.** Yes, sir. Of course, you vary that up and down you say according to the price that you pay for it.

**Mr. MINTER.** Yes, sir.

**Mr. CARTER.** And then, of course, the cost per ounce can easily be seen by the consumer, and as I gather it, that is the purpose of this act, the comparability feature.

**Mr. MINTER.** Yes.

**Mr. CARTER.** Thank you. That is all.

**The CHAIRMAN.** Mr. Farnsley.

**Mr. FARNSLEY.** Thank you, Mr. Chairman. I share your fear of standardization. I understand what you are talking about. Suppose

we passed your amendment and then adopted a part of this law or other laws which said on Mr. Goodbar for instance in the same type-face as "Mr. Goodbar" how many ounces. Would you have any objection? Hold up Mr. Goodbar and tell me how many ounces are in it.

Mr. MINTER. Two ounces.

Mr. FARNSLEY. Suppose it said "2-ounce Mr. Goodbar" in the same type face as Mr. Goodbar, would you object?

Mr. MINTER. Yes; I think we would. I think present labeling requirements do protect the consumer adequately. You don't have to hunt and search. This says clearly 2 ounces. I think we want to make packages as attractive as possible in the use of lithography, color, shape, size, and so forth. I think it would destroy the impulse appeal of the wrapper if you had to have a big 2 ounce the same size.

Mr. FARNSLEY. I should know what the present rule is about how big the ounces has to be and where it is on the package. Can you tell me what the present rule is?

Mr. MINTER. It has to be where it can easily and readily be seen by the consumer, and in the way it is normally displayed and offered for sale. It has to be of a type that he can readily see. It must contrast with the background. If you have a dark background you have to use white letters say. You can't use chocolate so he has to fish all around and see it. Present regulations require that it be easily read and legible—visible.

Mr. FARNSLEY. I have to confess that in buying from a vending machine I find it difficult to compare ounces. You would object to any larger designation of the ounces? In other words, you don't want it any bigger than it is now or any more standardized as to where it is on the package or the kind of type it should be?

Mr. MINTER. Presently it has to be so it is clearly discernible to the consumer. If it isn't, it is in violation.

Mr. FARNSLEY. Visible to the consumer holding it in his hand maybe. I have trouble in quickly comparing the ounces in a vending machine. Your objection to putting it the same size of the label is purely esthetic. You have touched my heart with this business about how the price goes up and down. You keep me posted on the price of sugar.

It seems to me the law says it has to be easily read; but it isn't easily read, and it isn't easily compared. Now you are not willing to go as far as making it as big as Mr. Goodbar or Hershey, and you are not willing to go any further than the present size or the present standardization as to location, is that right? Is there any compromise you would be for? Half as big as the label or something?

Mr. MINTER. The law requires that it be easily visible.

Mr. FARNSLEY. You have told me that.

Mr. MINTER. If it isn't so in a vending machine, then the size and the location needs to be increased.

Mr. FARNSLEY. I don't mean to be rude, but you have told me that twice. Now I am asking you a straight question. Are you in a position to say now whether you would compromise for a larger labeling or a more uniform location or one more easily read as to the ounces? Of course, my being for it doesn't make much difference. I am a "lame duck." But I am just interested in the position of the industry.

You don't want the number of ounces any bigger than it is now?

Mr. MINTER. I am not in a position to say what position the industry would take.

Mr. FARNSELY. You are from a nice company and I know how hard it is to run a little company. How do you feel about it? Would you want it to be bigger?

Mr. MINTER. If it can't easily be seen at the present time I certainly would; yes, sir.

Mr. FARNSELY. But the law says it has to be easily seen now. So you want to stay with the present rule.

Mr. MINTER. Enforce the law.

Mr. FARNSELY. You have answered my question. Thank you.

The CHAIRMAN. Thank you. Mr. Adams.

Mr. ADAMS. I was quite interested in all the items that you have there, are what I would say in the candy business would be specialty items. For example, you compete between the Baby Ruth bar, Mr. Goodbar and so on, on a specialty basis. People don't buy ounces or a brand. They buy a confection.

I notice you don't have any of the pound boxes of candy or the 2-pound boxes. I will ask you this question. Do you vary the weights in the pound or 2-pound box?

Mr. MINTER. No; we have a different situation there. The weights stay the same. A pound box is always a pound. It is the price.

Mr. ADAMS. The price varies. Now do you have in your business a sampler or a standard size box that may not say one pound on it, but to the public they buy it as a 1- or a 2-pound box, or do you standardize right across the board that a pound box of candy is a pound box of candy?

Mr. MINTER. Well, a pound box of candy couldn't be for all manufacturers the same size. For instance—

Mr. ADAMS. Yes, I know it might vary, but let me get down to this. Take a Sampler. I am trying to remember which one, I think it is Whitmans puts out a Sampler.

Mr. MINTER. Yes, right.

Mr. ADAMS. It is a box that you go in and buy something for Valentine's Day; you have got two or three boxes.

Mr. MINTER. Right.

Mr. ADAMS. Is that a pound or a 2-pound box or is that a variable weight box?

Mr. MINTER. That is 1 pound.

Mr. ADAMS. OK.

Mr. MINTER. Or 2 pounds.

Mr. ADAMS. Or 2 pounds, all right. Now I want to know about the candy bars, the big bars, not little ones, where you buy the big Hershey bar. This varies in price. In other words, it may be 18 cents, 29 cents, and so on. Does the weight of that vary?

Mr. MINTER. I don't know which bar you are referring to.

Mr. ADAMS. I am referring now to the big bars that are beyond this, beyond the 10-cent bar.

Mr. MINTER. You are talking about the ones that have a constant price of 29 cents let's say at supermarkets, then the price wouldn't vary, but the weight would if the situation demanded it.

**Mr. ADAMS.** The weight would vary from time to time. In other words, that does not have a standard weight. You peg that to a price?

**Mr. MINTER.** That is correct.

**Mr. ADAMS.** Now the price can also vary on that, can it not among the stores?

**Mr. MINTER.** Generally not. There might be some specials, some promotions which an individual retailer might have from time to time, sure.

**Mr. ADAMS.** Now as I understand it, you in answer to Mr. Mackay's question, basically the labeling provisions, the mandatory provisions in 5(1)(c) are something you are not worried about. You are worried about the second section. Has your industry ever gone in under the voluntary products standards and attempted to establish in the Department of Commerce, attempted to establish any kind of standards?

**Mr. MINTER.** No, sir; not to my knowledge.

**Mr. ADAMS.** Either in terms of volume or in terms of unit prices or in terms of weights? Not at all?

**Mr. MINTER.** No, sir.

**Mr. ADAMS.** Why not?

**Mr. MINTER.** Let's go back to the 1-pound box, for instance. Let's take the Whitman 1-pound Sampler. We make chocolates but ours are different sizes. Whitman's—I think the 1 pound runs about 46 pieces to the pound—is an assorted box of chocolates. Our assorted boxes run 42 pieces to the pound, so it would require for a pound a different size box.

Or let's take miniatures. Now they run about 80 or 85 pieces to a pound. That would comprise a different size box.

**Mr. ADAMS.** Your industry has standardized in the fact that it has 1- or 2-pound boxes. What I am asking, in any place in your industry now is somebody relying on the familiarity of the box or the familiarity of their brand, taking the weight designation of 1 pound and just removing that and putting on it the proper label that this now contains 14 ounces or 14½ ounces on the brand carried? Has that been done yet?

**Mr. MINTER.** I don't know honestly whether it has or has not.

**Mr. ADAMS.** Could you find out through your association, and make it available to us, not today, but just submit it to us?

**Mr. MINTER.** I will certainly try to find that out.

**Mr. ADAMS.** Thank you. No further questions.

**The CHAIRMAN.** Any further questions? **Mr. Springer.**

**Mr. SPRINGER.** May I ask this. I think your statement is excellent. Nearly all of these who come in has a particular problem. Now as I run through it, you have problems but your big one as I gather it is in the candy field because practically all of the manufacturers of bars we will say are 5, 10, or 15 cents. Some of them I notice in the theaters are 25 or 35 cents, but mostly as you say, 43 percent of all candy is sold in bars.

Now, I have watched this and I notice especially the smaller bars go up and down as the products that go into it go up or down accordingly. Your problem is being sure that you are in the 5- and 10-cent range at all times, so that you can operate economically.

Mr. MINTER. That is correct.

Mr. SPRINGER. In other words, you have to operate at a profit to stay in business. The problem is, say on the day cocoa beans are selling at 10 cents, if cocoa beans go to 7 cents, which has happened at one time, would you have to lower or raise the size of the bar to keep it in the 5-cent range. We will say if it is a Heath bar, which happens to come from my particular area, not in my district I may say, a very fine candy company. That goes up and down as the price of the products go up and down that go into the bar.

Now if you have an ounce or 2-ounce bar——

Mr. MINTER. Heath?

Mr. SPRINGER. Yes.

Mr. MINTER. Heath is an ounce and three-quarters.

Mr. SPRINGER. In the 2 ounce range, if they set up a Heath bar at 2 ounces or an ounce and a half or an ounce and three-quarters, then each time they had a change I take it you would have to come back for regulation again? Is that your thinking of what would happen if you had these standardized practices?

Mr. MINTER. I don't know if that would be required or not. I don't believe it would, sir. If that were required, that would really be a problem. We would be in and out of——

Mr. SPRINGER. What do you think this bill does to the candy industry? That is what I am trying to figure out. It is my understanding from reading the bill, I have just reread these sections here on pages 6 and 7. It would be my understanding that they can define the size of this package.

We will assume that it is 2 ounces. We will say it is  $2\frac{3}{4}$  ounces. It is 10 cents instead of a nickel. It is my understanding here that they can establish the net quantity of any product in terms of weight measure. That is a serving.

Now do you think under this bill they can set the net quantity of the contents?

Mr. MINTER. I think the bill gives them the authority to do so.

Mr. SPRINGER. That is what I understood. I believe that is all the testimony we have heard on crackers and canned goods here yesterday and the day before. If that is true, then do you think under this legislation if the Federal Trade Commission says that it must be 3 ounces, then you would have to come back when the cost of this article goes up, if you want to stay at 10 cents; is that correct? You would have to do that or raise it to 11 or 12 cents.

Mr. MINTER. That is correct.

Mr. SPRINGER. You would have to raise the price if it stayed at  $2\frac{3}{4}$  ounces.

Mr. MINTER. At that one specific weight; yes, sir.

Mr. SPRINGER. Now this is a problem. I can see that the candy industry would find it extremely difficult if this is what you have to do. I want to be sure that your understanding of this is the same as mine. Does your counsel advise you that this is your interpretation of the bill?

Mr. MINTER. We interpret that it could be standardized, but in increments. For instance, we make an assumption here in our examples that let's say a candy bar could be standardized in half ounce incre-



ments or even ounce increments. Now we presently move in sixteenths and an eighth of an ounce increase, but under standardization it could be made in ounce increments.

If the intention is to remove the proliferation, and we presently go in one-sixteenth and one-eighth, then presumably they would not limit it to less than half or maybe even an ounce.

Mr. SPRINGER. Another thing has bothered me a little bit is the quality of bars. Now I can take some bars, and I have recently done this, and tasted them since this hearing started, to get sort of a picture. It might be that I have a preference for certain types of candy, but it seems to me that there is a substantial difference in the quality of candy in bars. Is that true or not?

Mr. MINTER. Unquestionably, and certainly price and weight, especially in the candy field—

Mr. SPRINGER. If you are going to say that a candy bar must be in 2 or 2½ or 3 ounces, what this then does goes to the question of quality, where the man wants to stay in the same field, where a fellow who gives you this long a bar for a nickel and the fellow who gives you a smaller size, they are certainly not going to be the same in weight, are they?

Mr. MINTER. There is no question about it.

Mr. SPRINGER. This raises some real problems and I want to be sure the committee gets into this whole question of candy. There is another thing I am interested in and then I am through. Do you have any figures, and from your statement I am not sure, on what this will do to the question of costs to your industry if this standardization takes place? I am talking about what would be the effect on costs. You are in the manufacturing business; aren't you?

Mr. MINTER. Yes, sir.

Mr. SPRINGER. I assume you know something about it.

Mr. MINTER. Yes.

Mr. SPRINGER. What would this do on the question of costs? I am not talking about the wrapper. But what would this do on the question of costs?

Mr. MINTER. You mean our production costs?

Mr. SPRINGER. Yes, if we had standardization.

Mr. MINTER. I don't see that it would have any appreciable effect one way or the other.

Mr. SPRINGER. On the whole question of costs it would not. Your big question is the question of being able to adjust the bar to stay in the 5-, 10-, and 15-cent category.

Mr. MINTER. It would have a ruinous effect on sales.

Mr. SPRINGER. It would what?

Mr. MINTER. It would have a ruinous effect on sales if we couldn't maintain a consistent 5- and 10-cent package.

Mr. SPRINGER. If you had to go to 6, 7, 11, or 12 or 18 cents.

Mr. MINTER. It is an impulse item and people are simply not going to wait around for 2 or 3 cents in change. They are not even going to pick it up.

Mr. SPRINGER. This is your real problem.

Mr. MINTER. Yes.

Mr. SPRINGER. This is the impact of this legislation on the 5-, 10-, and 15-cent bar.

Mr. MINTER. Absolutely.

Mr. SPRINGER. You are pretty well convinced, your industry is pretty well convinced of this unanimously?

Mr. MINTER. Yes, I am representing the industry in this position.

Mr. SPRINGER. Have you had any sales tests on this?

Mr. MINTER. No. We honestly haven't. There are isolated instances, let's say where there is an ordinance in a resort hotel or something where they might get 6 cents for normally a nickel bar, but they don't sell many of them.

Mr. SPRINGER. This is rather irritating to me. For instance, I went to the Mayflower the other day and I bought a 5-cent bar and they asked for another penny. That is 20 percent more. I could have walked across to Peoples and got it three for a dime. It not only irritated me, but I think if I had known it was 6 cents I probably would not have bought it, that is very true. So here is the Mayflower on one corner and Peoples directly across the street which is selling three for a dime, the same bar that I bought in the Mayflower for 6 cents, but I think it was the fumbling around to get that extra penny which ordinarily I think if I had known it was 6 cents I wouldn't have gotten it. I understand your problem.

Mr. MINTER. Thank you, sir.

THE CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. May I state I can see your problem, too, where you have a fraction over the ounce, and actually I presume the way you do it, it would work out to be a saving for the consumer, does it not?

Mr. MINTER. No question about that, sir.

Mr. ROGERS of Florida. Then, of course, you have all these machines now that so much candy is sold from that you can't very well change the machines to make them put in 12 cents or 6 cents. You would have to change all the machines.

Mr. MINTER. I suppose that would be possible. The cost would be frightening, No. 1, and No. 2, I don't think people are going to fumble with the pennies for the 12 cents.

Mr. ROGERS of Florida. So it would be helpful to the industry simply to increase this exclusion. They have agreed that they shouldn't cover 2 ounces and under.

Mr. MINTER. Yes.

Mr. ROGERS of Florida. You are saying a little over that would be helpful to the industry.

Mr. MINTER. Right, but 1 pound would then cover all instances. There must have been some reason for it in the first place to come up with 2 ounces. What I am trying to point out is to cover the situation fully the exclusion should be "if it is confectionery less than 1 pound."

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

THE CHAIRMAN. Mr. Farnsley.

Mr. FARNSELEY. Let me offer you a little free advice. Go back and talk to your people. I don't say you have to do anything, but it might be that you can suggest a larger amount as a compromise without destroying the esthetics of your product.

Mr. MINTER. The size type?

Mr. FARNSEY. I don't want to destroy the candy business. I was in the legislature and in city hall. Everything is always going to destroy the industry. You realize that you are not the first industry to be destroyed. But it is possible that you could be noble and not really destroy yourselves by making the label a little bit bigger, I mean the pounds or ounces, and then you could say, "Well, Coca-Cola has to do it too." Make everybody else do the same. It can't hurt to kick that around a little bit. Thank you.

Mr. DINGELL. Mr. Chairman.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. You say, sir, on page 3 of your statement that package standardization is urged by the legislative proponents. You indicate that there are other considerations. Do you want to catalog what the other considerations are?

Mr. MINTER. Certainly attractiveness. Package. The main concern, of course, is the quality of the product.

Mr. DINGELL. You say attractiveness of the package. It would be fair to say that the legislation here will affect only minimally the quality and attractiveness of the package; isn't that correct?

Mr. MINTER. No, I wouldn't say that is true.

Mr. DINGELL. The only thing this legislation requires is that the labeling indicates the costs, size, and weight of the package; am I correct? That is the only requirement that would affect the packaging; am I correct? Is there anything else? Is there any other requirement in the bill before us?

Mr. MINTER. The authority is given to standardize package sizes and weights.

Mr. DINGELL. Size and weights. But does it otherwise affect the paper you put on it, the colors or the patterns that you place upon it, the labeling?

Mr. MINTER. No.

Mr. DINGELL. It does not. All right, now this bill doesn't affect the quality, does it, of the contents?

Mr. MINTER. No, but it could affect the quality.

Mr. DINGELL. What do you think the industry should compete on most? Should it compete on the quality of the merchandise or should it compete upon the size of the package?

Mr. MINTER. On the size of the package?

Mr. DINGELL. Yes. Should it compete on the size of the package or compete upon the quality of the merchandise?

Mr. MINTER. I don't think that you can pin down what goes into a consumer's buying decision; there are so many factors involved.

Mr. DINGELL. I asked you which is more in the consumer's interest, for competition to be based on such peripheral matters as package, shape, and size or upon the quality and the consumer acceptance of the commodity packaged?

Mr. MINTER. The quality, I would say.

Mr. DINGELL. Let me ask you this: Are there any regulations in the industry applicable to candy that stem from the question of slack fill?

Mr. MINTER. Yes, sir.

Mr. DINGELL. There are? Are they by Federal or State or local agencies?

Mr. MINTER. Of course, you have the Federal.

Mr. DINGELL. I beg your pardon?

Mr. MINTER. We have the Federal legislation.

Mr. DINGELL. By the Federal. This is done under the Food and Drug Administration law.

Mr. MINTER. Federal Food, Drug, and Cosmetics Act; yes, sir.

Mr. DINGELL. I see. Well now, do you oppose action by the Food and Drug Administration with regard to reaching the problem of slack fill?

Mr. MINTER. Where it is deceptive, absolutely not.

Mr. DINGELL. Would you oppose congressional directives that slack-fill regulations be promulgated with regard to any food, drug, and cosmetic product where there is any evidence of substantial impact by slack fill on sales?

Mr. MINTER. No, sir.

Mr. DINGELL. Let's talk a little bit about the problem of slack fill in your particular industry. As the price of the candy goes up and down, the size of the bar is increased or shrunk, am I correct?

Mr. MINTER. Yes, sir.

Mr. DINGELL. But the packaging size of the bar often remains the same size, does it not, in spite of the fact that the contents are diminished considerably in size?

Mr. MINTER. It depends upon your definition of "considerably." A sixteenth of an ounce, I don't really think is considerably, no.

Mr. DINGELL. Let's just say that the bar size is shrunk, and the packaging size remains substantially the same. Isn't this a fact in many cases?

Mr. MINTER. Substantially the same.

Mr. DINGELL. Substantially or identically the same. In most instances it is not changed at all. It is simply that the size of the bar is shrunk, am I correct?

Mr. MINTER. I don't know if this is the case in most instances.

Mr. DINGELL. It is in many instances.

Mr. MINTER. I would not agree with that.

Mr. DINGELL. There is a cardboard backing put in there to maintain the stiffness of the package, am I correct?

Mr. MINTER. The function of the cardboard backing is to make sure that the product doesn't get cracked.

Mr. DINGELL. You also concede, however, that it provides a very useful service of also keeping the package stiff, so it doesn't collapse around the bar, am I correct?

Mr. MINTER. Yes.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. DINGELL. Just as soon as I have asked a couple of more questions, I would be very happy to. But the fact of the matter is this has a substantially deceptive effect on some of the purchases of the commodity does it not?

Mr. MINTER. I wouldn't say so, no.

Mr. DINGELL. You wouldn't.

Mr. MINTER. If it does, it works both ways.

Mr. DINGELL. Let's take somebody who looks in a machine. He has five or six bars and he wants to pick. Yesterday he bought a candy

bar that contained a certain weight. He sees the same size package, but because of a price increase or because of the wish of that particular manufacturer, the size and content of the package has shrunk. I am sure you will agree that this does occur from time to time.

Mr. MINTER. And increases, yes.

Mr. DINGELL. Yes, and increases too.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. DINGELL. I will yield to the gentleman, but I still have a couple of questions I want to ask of the witness. But then, let's take an 11- or 12-year-old child who is a big customer of these automatic coin operation dispensers. He goes in and yesterday he bought himself a bar at 5 cents. It contained one amount. Today it contains a lesser amount with the package exactly the same size.

Now let's say he buys that. He has every reason to assume he is getting the same size bar, does he not?

Mr. MINTER. I would say so, yes.

Mr. DINGELL. I beg your pardon?

Mr. MINTER. I would say so, yes.

Mr. DINGELL. He does? I have a difficult time hearing you. I wish you would speak up.

Mr. MINTER. I would say yes.

Mr. DINGELL. But he is not getting the same size bar because the contents have shrunk. He is actually getting less, paying more. He is paying a higher unit price, is that correct?

Mr. MINTER. Or he might be getting more, depending upon the situation.

Mr. DINGELL. He might be getting more, but under my particular supposition he is getting less. Do you regard this as being fully fair to this young person, when he might have an opportunity to choose between five or six bars? Some may not have shrunk by weight.

Mr. MINTER. The weight is clearly stated on the label, sir.

Mr. DINGELL. Obviously a 5 or 6 year old or an 11 or 12 year old or even an 18 or 20 or 60 year old isn't going to spend a great deal of time looking at that weight when he pulls that lever on that dispenser, is he?

Mr. MINTER. No.

Mr. DINGELL. The practical effects of this would be to confuse or deceive that person with regard to the actual amount of the commodity which he is receiving, isn't it?

Mr. MINTER. Then what would you have us do, continue to manufacture the item at a loss?

Mr. DINGELL. I am not making any suggestions to you. I am simply discussing the practical effect on the purchaser.

Mr. MINTER. Let me say that if the size changes appreciably, the size of the bar, the weight of the bar, then the package changes. If it doesn't, then it is slack and should be prosecuted.

Mr. DINGELL. It should be prosecuted. But you will concede that there are instances where this does have a substantially deceptive effect to the detriment of the purchaser, is that correct?

Mr. MINTER. No, I wouldn't concede that at all, no sir.

Mr. DINGELL. Do you state that this kind of practice does not go on in the candy industry then?

Mr. MINTER. I am denying that it is flagrantly deceptive.

Mr. DINGELL. Do you make the categorical statement that—

Mr. MINTER. No, I didn't say that. The practice exists.

Mr. DINGELL. Then you are not able to deny that it goes on. It is a pretty well known fact that this practice does go on in the candy producing industry.

Mr. MINTER. Yes, I would think so occasionally.

Mr. DINGELL. And it is rather extensively practiced. Very well, I will yield to the gentleman from Florida.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Mr. Chairman, I just want to point out to my colleague here, I think when we realize that here is an industry putting out a bar in a wrapping, that if you change it by say one-sixteenth of an ounce or two-sixteenths, I assume from the gentleman's argument he would want you to change all your wrappings and alter packagings for one-sixteenth. I doubt if you could even discern that in the changes that you would make to reflect it.

Mr. MINTER. The overall dimensions usually don't change in that instance. If it is a bar with a coating, with a center, and coated with chocolate, the increase or decrease in the weight is usually in the coating, and there are no noticeable dimensional changes at all.

Mr. ROGERS of Florida. The Administration says they don't even want anything done with 2 ounces and under. This is getting almost to an absurdity.

Now also, one reason for young people that you don't make the change is because you want them to go to a machine and use a nickel so that daddy doesn't have to give them 6 cents to put in. We have just got to be practical about this thing and not absurd.

Mr. MINTER. I agree.

Mr. ROGERS of Florida. I think your position is reasonable.

Mr. MINTER. Thank you, sir.

The CHAIRMAN. Any further questions? If not I want to thank you, Mr. Minter, for your coming here and giving us the benefit of your views. I think it has been enlightening. I thank you have been very fair, and the members of the committee want to be fair with your industry and with every other industry.

Mr. MINTER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you again.

Our next witness will be Mr. Edward Williams, National Association of Frozen Food Packagers.

Mr. Williams, will you come forward, please? I might say that you might put your statement in the record and summarize it.

#### **STATEMENT OF EDWARD BROWN WILLIAMS, COUNSEL, NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS**

Mr. WILLIAMS. Mr. Chairman, I propose to read a shortened version of this statement. My name is Edward Brown Williams. I am counsel for the National Association of Frozen Food Packers, upon whose behalf I appear. The members of the association produce some 85 percent of the frozen foods marketed in the United States. In 1965, the total production of the frozen food industry was in excess of 9 billion pounds, with a retail value of over \$4 billion.

The association is vitally interested in S. 985 and H.R. 15440, both on principle and because of the seriously damaging effects which we are convinced the enactment of either bill would have upon the frozen food industry. There are not just packaging and labels bills. Their effect would be in large measure to transfer from industry to Government basis decisions on marketing policy which we have seen no evidence that Government is qualified to make.

We believe that, when legislative proposals involve devices which would further shackle the economy with mandatory regulations, as these bills would do, the Congress should make certain that the burden of proof to justify them is satisfied by their proponents. It is our view that the question should be, in considering such legislation, whether such abuses in product marketing as are demonstrable justify the drastic remedy which is being proposed, in view of the inestimable contributions which industry makes to our economy under its present methods of operation.

We are satisfied that the need for the proposed legislation has not been demonstrated. It has already been pointed out that the proponents of the bills have failed to show that the cost of the legislation to industry and consumers would be justified by its alleged benefits.

It is our view that in lieu of enactment of new laws providing for, to borrow a word, the proliferation of present extensive regulatory structures, existing consumer programs, such as those of FDA and the FTC, should be improved by an increase of cooperation and understanding between the regulatory agencies and industry. The association maintains close contact with FDA, and has done so since its inception.

For example, through a Task Force on Labeling and Packaging, in 1963, the association reviewed and cataloged more than 3,000 frozen food labels, and, in December of 1964, published a comprehensive Manual of Labeling Practices for the frozen food industry. The manual presents a system for uniform and consistent placement of information that is required on labels by present law, and includes as recommended minimum type-sizes for quantity declarations, the type sizes adopted by the National Conference on Weights and Measures.

Suggestions made in the manual, however, go well beyond legal requirements in order to encourage informative labeling. The manual has been widely distributed in the industry, and copies were sent to the appropriate regulatory agencies of the 50 States, to the Food and Drug Administration, and to the Meat and Poultry Inspection Division of the U.S. Department of Agriculture. Comments received from these agencies have been uniformly favorable. We believe that this kind of industry effort is a superior approach to the matter of packaging and labeling practices, especially in an industry such as ours, which has built a good record of compliance.

Packaging variations may be of the essence of competition and innovation, whether they make the package easier to handle than a competing one, whether the new package contains a quantity more suitable to particular needs than does another, or whether the new package is simply of a more pleasing design or shape.

When the frozen food industry introduced polyethylene bags for convenience in handling and for better protection for its products,

and provided the vacuum bag in which food may be heated without the loss of nutrients in the cooking water, there were no restrictions such as those which would be imposed under these bills to prevent or delay the use of these innovations.

We do not know to what extent such innovations would have been delayed, curtailed or rendered impractical as a successful marketing tool, by regulations imposing size, weight, shape or dimensional proportion limitations as authorized under H.R. 15440. But the new packages would be subject to regulation under the proposed legislation, and we can by no means be certain that it would not be found that, as now successfully used, they are likely to impair the ability of consumers to make price per unit comparisons with competing packages in a given product line, or that they are not of acceptable dimensional proportions.

Thousands of packages would be subjected to the proposed authority to standardize by weights and sizes, shapes and dimensional proportions. We are driven to wonder how selections of commodity lines for standardization can be made in this packaging labyrinth, without the discriminatory result of restriction upon packages in one commodity line, while leaving uncontrolled others which are in a different category, but which compete with the regulated ones.

FDA now has authority to define and identify a particular food, but under the bills under consideration, unknown numbers of packages selected for elimination could no longer be used, while unregulated packages of competing foods in a different product line would be undisturbed.

Again, under the bills, marketing policy would be determined by FDA, whereas today, it is being determined by the manufacturer. It might appear from some of the statements made in support of S. 985, the Senate bill, that the limitations in section 5(f) of the bill restrict the authority of FDA and FTC to make existing voluntary standards mandatory. They do not. Those limitations go only to the power of the agencies to establish mandatory standards which vary from the voluntary standards, with certain exceptions not relevant to the commodities generally.

Under such circumstances, the logical conflict of a concept of a voluntary standard and that of a voluntary standard made mandatory is obvious. Under such legislation the principal incentive to industry to propose an initially voluntary standard, if there were an incentive, would seem to be the hope that a more reasonable standard could be evolved through the procedures of the Department of Commerce than through those of FDA or FTC.

I should like to consider now the frailty of the foundation of such a hope. It can be demonstrated that the resort of the bills to voluntary product standards is unlikely to be truly meaningful. It is noted in the statement which you have before you that a voluntary product standard in effect when the legislation is enacted, may not be varied by a mandatory standard under such section 5(d), fixing the weights or quantities in which a commodity may be marketed.

In making that statement, I assumed that nobody would think that the voluntary standard made mandatory could never be amended to vary its terms when, for example, FDA makes a finding under section



5(d) of the bill that prevailing weights are likely to impair the ability of consumers to make price per unit comparisons.

It now appears, however, from what has transpired here, that my assumption was not valid. Certainly the bills would not be construed to prevent such amendments. The mandatory standard itself could not be changed, however, except by FDA or FTC, as the case may be, according to the procedures set forth in section 701(e) of the Federal Food, Drug, and Cosmetic Act.

It should be added that certain regulations under sections 4 and 5 of the bills may be promulgated without regard to any provision of voluntary standards which may be inconsistent with them. I have specified some of the provisions in question in the statement before you. The assurances that a voluntary standard is "grandfathered" by the bills should be read in this context.

The procedures of the Department of Commerce for developing voluntary product standards contain certain provisions which arouse real apprehension as to the effectiveness of the alleged safeguards for voluntary standards which have been so greatly emphasized by the sponsors of S. 985. These procedures provide for important roles in the development of such standards by State and Federal agencies, including FDA and FTC, industry, and consumers.

It is our understanding that in many instances these procedures have worked well in the past. There are two reasons why it may not safely be assumed that this will be so, if the proposed legislation is enacted.

First, under the proposed legislation, the Food and Drug Administration and the Federal Trade Commission will have a critical interest in intervening in the standard-making process before the Department of Commerce, to make certain that a standard does not conflict with their conception of the public interest, with the provisions of the statutes which they administer, or the policies which they have adopted, and that the standards are sufficiently inclusive to obtain the regulatory objectives of the agency.

The interest of those agencies would be perfectly understandable, since under the proposed legislation, once a voluntary standard is published, FDA and FTC may not vary its terms when it is made mandatory.

If a standard is proposed by industry, to which FDA or FTC has serious objections, we cannot doubt that those agencies could and would strongly and successfully object to the adoption of provisions which they considered inadequate or unsound. If because of their objections, no standards is published, or if a standard is not published within 18 months of its proposal by a producer or a distributor, a mandatory standard may then be established just as if no voluntary standard had been proposed.

Second, the increasing interest of consumers and consumer organizations in food standardization, labeling and packaging, and the burgeoning number and importance of official representatives and advisers in Federal and State Governments assure growing consumer participation and insistence upon such participation in the development of voluntary standards.

The spotlight of public interest will be thrown upon the voluntary standardmaking process as a result of the proposed legislation, if it

is enacted, as never before. The prospects of a consensus of industry and consumers, not to mention FDA, upon a standard is, we believe, extremely remote in any controversial matter. The experiences we have had with consumers appearing in FDA regulatory proceedings permit of no other conclusion.

Where no consensus is reached on a voluntary standard, FDA or FTC, as the case may be, are free to proceed with the establishment of mandatory regulations. We believe, therefore, that the effect of the proposed legislation will be to cripple fundamentally the voluntary standardmaking process.

One of the disturbing aspects of this legislation is the kind of promotion which it has received. Permit me to list examples of what I mean, in addition to the widely advertised truth in packaging slogan.

First, it has been estimated as an informed guess that the bill would save the consumer \$250 yearly. In a population of 200 million people—there are actually some 197 million in the United States today, according to the Bureau of the Census—this would add up to a total saving of \$50 billion per year or five-eighths of the \$80 billion of all average family spending on kitchen and bathroom products covered by the bill.

In the recent Senate debate on the bill, the \$250 savings figure was related not to the individual but to the consumer family. If we assume the proposed saving is per family rather than per individual, the same 48 million families in the United States would save only \$12 billion.

The savings in question have been used as a basis for a claim that the bills are anti-inflationary. If either incredible figure, \$50 billion or \$12 billion, were within measuring distance of fact, it could hardly be denied that the bills would be anti-inflationary.

Second, the horrible example of 71 weights and sizes of potato chips has become very popular. This question was posed in the Senate debate. I quote:

Where is the Senator who will stand here today and declare the American consumer has demanded that she be confronted with 71 different package weights [of potato chips] when she enters the market?

On its face this direct implication that upon entering the market one may be confronted with 71 different weights of potato chips is without substance. In a big supermarket, the consumer may be confronted with five or six different sizes, or perhaps more. I think we heard as many as 17 in some instances the other day. But certainly not with any number of sizes approaching 71.

Obviously, given the hygroscopic nature of the product, it is a convenience to the consumer to afford her the opportunity to purchase a package whose contents will be consumed before they become stale by the absorption of moisture. Different sizes of packages meet this demand.

Third, representation has been made by the sponsors of S. 985 that the proposed legislation is needed because present law is aimed primarily at preventing fraud and conscious deception. Anybody who is familiar with the Food, Drug, and Cosmetic Act, and the Federal Trade Commission Act, knows that neither fraud nor conscious de-

ception are necessary elements of proof of violation. If labeling is found to be either false or misleading, that fact alone is sufficient to support legal proceedings against that product under the Food, Drug, and Cosmetic Act.

Unfair or deceptive acts or practices are cognizable under the Federal Trade Commission Act, regardless of fraud or intent to deceive. The reality is, therefore, far removed from the statements which have been made with respect to the nature and requirements of present law.

Fourth, it was stated in the course of the Senate debate with respect to the status of voluntary product standards under S. 985 that:

Only if a standard could not be agreed upon, or if agreed upon and the standard is not adhered to, could the promulgating authority proceed to the second stage [Section 5(d)(2)] of developing a standard which would be mandatory.

This statement was made in the context of a situation where a determination has been made under section 5(d) that the weights or quantities in which a commodity is being sold at retail are likely to impair the ability of consumers to make price per unit comparisons. We find no restriction in the bill which would require a finding that a voluntary standard has not been adhered to as a condition of establishing a mandatory standard.

Five. S. 985 has been put forward as a bill to implement the constitutional grant to the Congress of the power to fix the standards of weights and measures. A late reported expression of this theory is that:

The plain fact is that this is a weights and measures bill, simply a modern-day Congress' way of fulfilling the responsibility of regulating weights and measures given in Article I, Section 8 of the Constitution.

It is a beguiling concept that these bills rest upon article I, section 8. But we have found no factual or legal basis to support it. In the first place, the bills obviously go beyond the matter of weights and measures.

Secondly, a standard of weights and measures, as distinguished from the standards contemplated by the bills, is an original specimen weight or measure sanctioned by the Government, such as the international metric bar, which was the original standard measure of the meter. Such standards are established on the basis of absolutes. Thus, the basic unit of the metric system, the meter, was originally defined as one ten-millionth of the distance from the Equator to the true North Pole. We must ask, therefore, whether the relationship between packages of various sizes or weights and the real concept of a standard of weights and measures justifies the claim that this is a weights and measures bill in the constitutional sense.

Six. We are told that industry is favored by the invocation of the voluntary standards procedure as a basic feature of the proposed legislation. None will maintain that business conditions or regulatory requirements remain static, so that amendments to regulations are never required. Yet, once either FDA or FTC has made a voluntary standard mandatory, as it may do, the standard may not be revised by the Department of Commerce as voluntary standards may be today. Such a standard may only be amended by FDA or FTC, as the case may be, according to the procedures prescribed in section 701(e) of the Federal Food, Drug, and Cosmetic Act.

Until the prescribed procedural steps have been taken, and experience teaches of the burdensome delays involved, innovation with re-

spect to the standardized package is stifled. Obviously, the end result may be negative for the innovator. This prospect truly would be an effective deterrent, in many instances, even to a proposal to a change.

We say that the examples of the kind of promotion used for S. 985 are disturbing because, if accurate, they would be persuasive of its virtue. Because such representations apparently have been persuasive in the Senate, we felt that it was necessary to straighten out the record to some extent.

In conclusion, Mr. Chairman, we should like to emphasize our conviction that the adverse economic effects of the bill would far outweigh its alleged benefits; that the shifting of marketing decisions from experienced manufacturers to Government is not in the public interest.

We do not understand how two agencies, the Department of Commerce and the FDA, or that department and the FTC, can successfully fix the same standards of weights, sizes, and quantities of a commodity. Such a concept seems on its face to be impracticable and ill conceived. This is entirely aside from the untoward effect that the contemplated procedures will have, we believe, upon the voluntary standardmaking program of the Department of Commerce, for the reasons which have been stated.

Voluntary standards could be made mandatory at any time. They could then be amended only under the procedures available to FDA or FTC under section 6 of the bills. Baldly stated, the intended effect of the bills is to force an initial voluntary standard by the threat of a mandatory standard, then to permit the forced voluntary standard to be made mandatory, and thereafter to freeze out any future voluntary standard. We see this as an unfair concept. It is not made more palatable by the manner in which S. 985 has been promoted.

Aside from these unfortunate aspects of the bills, we are distinctly and basically concerned with the stultifying effects which we believe they will have upon the introduction of new types of packaging and the discriminatory results which could come from standardizing one product line while leaving a competing line unregulated. This, we submit, would be bad business to consumers alike. Thank you.

(The prepared statement of Mr. Williams follows:)

**STATEMENT OF EDWARD WILLIAMS, REPRESENTING THE NATIONAL  
ASSOCIATION OF FROZEN FOOD PACKERS**

My name is Edward Brown Williams. I am counsel for the National Association of Frozen Food Packers, upon whose behalf I appear. The members of the Association produce some 85 percent of the frozen foods marketed in the United States. In 1965, the total production of the frozen food industry was in excess of nine billion pounds, with a retail value of over four billion dollars.

The Association is vitally interested in S. 985 and H.R. 15440 both on principle and because of the seriously damaging effects which we are convinced the enactment of either bill would have upon the frozen food industry.

We believe that, when legislative proposals involve devices which would further shackle the economy with mandatory regulations, as these bills would do, the Congress should make certain that the burden of proof to justify them is satisfied by their proponents. It is our view that the question should be, in considering such legislation, whether such abuses in product marketing as are demonstrable justify the drastic remedy which is being proposed, in view of the inestimable contributions which industry makes to our economy under its present methods of operation.

We are satisfied that the need for the proposed legislation has not been demonstrated. It has already been pointed out that the proponents of the bills have

failed to show that the cost of the legislation to industry and consumers would be justified by its alleged benefits. We are also satisfied that, if there were a demonstrable need for additional regulation the provisions of the bills would invoke regulatory action whose impact upon the economy of the country would be more destructive than remedial. These are not just packaging and labeling bills. Their effect would be, in large measure, to transfer from industry to government, basic decisions on marketing policy. We have seen no evidence that government is qualified to make such decisions.

#### THE ASSOCIATION'S LABELING PROGRAM

It is our view that improvement of some of the present consumer programs, such as those of the Food and Drug Administration and the Federal Trade Commission, would be more fruitful than the enactment of new laws providing for—to borrow a word—the proliferation of present extensive regulatory structures.

We are convinced that the most effective way of implementing present programs is by increase of cooperation and understanding between the regulatory agencies and industry. Our Association has maintained contacts with those agencies from its inception and continues its effort to promote fuller compliance by members of the frozen food industry.

In 1963, through a Task Force on Labeling and Packaging, the NAFPP undertook a comprehensive survey of frozen food labels. More than 3,000 labels, including private labels from food chains and frozen food distributors, were reviewed and catalogued by the Task Force and the Association staff.

In March of 1963 the Association, through the efforts of the Task Force, formulated and disseminated guidelines on minimum type sizes for quantity declarations.

In December of 1964 a comprehensive Manual of Labeling Practices was completed and published. This was a big job. The introduction to the manual states—

"This Program of Frozen Food Labeling Practices presents a system for uniform and consistent placement of information that is already required on labels. The program also provides a helpful guide on voluntary and informative labeling based on good commercial practice. Chapters III through VI deal exclusively with the requirements of the Food and Drug Administration. Chapter IX presents label profiles by commodity and product groupings for well over 200 kinds, styles, and types of frozen foods.

"The manual is recommended for your consideration as a dependable reference to follow in modifying present labels and in designing new ones."

Suggestions made in the manual go well beyond the legal requirements in order to encourage informative labeling to familiarize purchasers with the frozen product and the manner of its use.

The manual has been revised to include, as recommended minimum type sizes for quantity declarations, the type sizes adopted by the National Conference on Weights and Measures.

The manual has been distributed to the members of the Association and is available to non-members. It has also been distributed to interested allied industries engaged in the design and manufacture of labels and packaging.

In addition, copies of the labeling manual were sent to the appropriate regulatory agencies of the 50 states, to the Food and Drug Administration, and to the Meat and Poultry Inspection Division of the United States Department of Agriculture. The substantial number of comments received from these agencies have been uniformly favorable.

We firmly believe that this kind of industry effort is a superior approach to the matter of packaging and labeling practices, especially in an industry such as ours, which has built a good record of compliance. Certainly, with this background, the present broadly based controls of FDA are enough.

#### INTERFERENCE WITH INNOVATION

A fundamental objective of S. 387, the predecessor of S. 985, was, as stated by Senator Hart, "that the spirit and substance of the antitrust laws be extended to the relatively new form of nonprice competition represented by packaging."<sup>1</sup>

<sup>1</sup> Congressional Record, January 21, 1963.

S. 985 and H.R. 15440 are not presented under the banner of an attack on non-price competition represented by packaging. But the same purpose is there—to require manufacturers to make the products look alike (H.R. 15440), weigh the same and appear in the same size packages (S. 985 and H.R. 15440). A principal form of nonprice competition is product differentiation. That is regarded as an iniquity, unless it involves a difference in quality.<sup>2</sup> Yet packaging variations may be of the essence of competition and innovation. We should not forget the usefulness of package diversity to the consumer as well as to the manufacturer. It cannot be gainsaid that purchasers sometimes demand uniqueness and sometimes they demand practicality of design. Who can say that the consumer is not benefited when he is given an opportunity to purchase a package which is easier to handle than a competing one, or which contains a quantity more suitable to his needs, or which is of more pleasing design?

When the frozen food industry introduced polyethylene bags for convenience in handling and better protection for its products, and provided the vacuum bag in which food may be heated without the loss of nutrients in the cooking water, there were no restrictions such as those which could be imposed under these bills to prevent or delay the use of these innovations.

We do not know to what extent such innovations would have been delayed, curtailed, or rendered impractical as a successful marketing tool, by regulations imposing limitations of size, weight, shape or dimensional proportion. But the new packages would be subject to regulation under the proposals and we can by no means be certain that it would not be found by FDA that, as now used, they are likely to impair the ability of consumers to make price per unit comparisons with competing packages in a given product line, or that they are not of acceptable dimensional proportions.

#### DISCRIMINATORY EFFECTS OF PROPOSALS

The enormity of the job of dealing with the standardization of the sizes and weights (and under H.R. 15440, of the shapes and dimensional proportions) of the thousands of products which would be subject to the new regulatory authority would mean necessarily that some established foods would be marketed without control while others, in a different category but competing with the unregulated ones, would be subject to restrictive regulations.

FDA and the Department of Commerce are simply not equipped to deal with a problem of such magnitude, in a manner which would avoid discriminatory treatment among competing products; nor can it reasonably be expected that they would be so equipped if the proposed legislation were enacted. The inevitably selective process which the agencies would be forced to follow would itself result in unfair competition between regulated and unregulated competitors. The courts have recognized the inequity of such selection of regulatory targets in case by case proceedings and have condemned it where there is a "patent abuse of discretion".<sup>3</sup> The potential for regulatory discrimination among competitors, however unintended, would be immeasurably greater in the vast labyrinth of package standardization than it is under existing legislation. Instead of discriminatory regulation of one competitor, the discrimination would run to manufacturers of entire product lines. FDA now has authority to define and identify a given food: but under the proposed legislation, that agency would be granted the power to exclude from commerce unknown numbers of sizes, weights, shapes, and dimensional proportions of packages of all manufacturers of a food. Again, the decisional power over marketing policy would be shifted from the manufacturer to the agency.

#### "VOLUNTARY" AND MANDATORY STANDARDS

In considering these proposals it is important to understand that an existing voluntary standard establishing weights (or sizes) or quantities in which a commodity may be marketed can be made mandatory by FDA or FTC *at any time*, subject to the hearing and other procedural provisions of the bills.

The limitations in Section 5(f) of the bills upon action by those agencies do not restrict their authority to make existing voluntary standards mandatory, as

<sup>2</sup> Hearings on S. 387, pp. 374, 375.

<sup>3</sup> *Universal-Rundle Corp. v. Federal Trade Commission*, 352 F.2d. 831, 834 (C.A. 7, 1965); *Moog Industries v. Federal Trade Commission*, 355 U.S. 411, 414 (1958).

might be assumed from some of the statements which have been made in support of the proposed legislation. Those limitations go only to the power of the promulgating authority to establish mandatory standards which *vary* from the voluntary standards (with certain exceptions not relevant to commodities generally).

The repeated emphasis upon voluntary standards by the proponents of S. 985 must be read in this context. The logical conflict between the existing concept of voluntary standards and that of a voluntary standard—made mandatory, is wholly obvious.

Under such legislation the principal incentive to industry to propose an initially voluntary standard, if there were an incentive, would seem to be the hope that a more reasonable standard could be evolved through the procedures of the Department of Commerce than through those of FDA or FTC. I should like to consider now the frailty of the foundation of such a hope.

#### THE STATUS OF "VOLUNTARY STANDARDS" UNDER THE BILLS

As has been noted, under certain circumstances stated in Section 5(f) regulations establishing weights or quantities (Section (d) (2)) may not "vary" from an applicable voluntary product standard. The meaning of the term "vary" in this context would be a subject of lengthy disputation between agencies, consumers, and industry, if the invocation by the bills of the use of voluntary product standards were of real significance. That the resort to voluntary product standards is unlikely to be truly meaningful can be demonstrated. Some reasons for this conclusion are stated hereinafter—not necessarily in the order of their importance.

First, the prohibition of variations from the provisions of a voluntary product standard in effect when the legislation is enacted, extends only to a mandatory standard established under Section 5(d), fixing the weights (or sizes) or quantities in which a commodity may be marketed. In establishing mandatory regulations under Sections 4 and 5 of S. 985, however, FDA and FTC may disregard the provisions of a voluntary standard relating to the descriptive words or other terms used on packages and, under H.R. 15440, may ignore the provision of voluntary standards relating either to terms under or to dimension of packages.<sup>4</sup> The assurances that a voluntary standard is "grandfathered" by the proposed legislation must be read against this background.

Thus, under S. 985, provisions of voluntary standards relating to the "identity" of the commodity (Section 4(a) (1)) or to the use of qualifying words in conjunction with the statement of net quantity of contents (Section 4(b)) could be ignored in establishing mandatory regulations. Likewise, mandatory regulations under Section 5(c) could be established without regard to the voluntary standard, i.e., regulations characterizing the size of a package and regulations fixing the terms which may be used to convey information with respect to fixing the terms which may be used to convey information with respect to ingredients and composition. As we have observed, there is even less restriction on variations under H.R. 15440, since under Sections 4 and 5 of that bill the promulgating authority may establish mandatory regulations without regard either to the provisions of the voluntary standard relating to terms or to those applicable to dimensions of packages.

Second, the procedures of the Department of Commerce for developing voluntary product standards contain certain provisions which arouse real apprehension as to the effectiveness of the alleged safeguards for voluntary standards which have been so greatly emphasized by the sponsors of S. 985.

These procedures provide for important participatory roles in the development of such standards by State and Federal agencies, industry, and consumers. Thus, initiation of the development of a standard for a particular commodity may be requested by "any State or Federal agency", as well as by groups of manufacturers, distributors, consumers, users, or testing laboratories (Section 10.1(a)). A proposed standard will be subjected to an impartial technical review by "an appropriate individual or [government] agency (\* \* \* not associated with the proponent group)" (Section 10.2(b)) and circulated to inter-

<sup>4</sup>The Procedures for the Development of Voluntary Product Standards of the Department of Commerce (15 C.F.R. Part 10) contemplate that such standards "may cover terms, classes, sizes . . . dimensions, capacities, quality levels, performance criteria, testing equipment and test procedures".

ested parties for comment. A standard Review Committee reviews the proposed standard and upon approval of three-quarters of its membership recommends its adoption by the Department of Commerce. This Committee is composed of "qualified representatives of producers, distributors, \* \* \* consumers or users of the product \* \* \*, and any other appropriate general interest groups." (Section 10.3(a)). If any member of the Committee makes a showing that the recommended standard would be contrary to the public interest or inconsistent with law or public policy, it will not be distributed for acceptance. If distributed, the recommended standard must be accepted by a "consensus" of "producers, distributors, users, consumers, appropriate testing laboratories, and interested State and Federal agencies \* \* \*" (Section 10.5 (b) and (c)). Prior to publication of the standard a Standing Committee, composed of "an adequate balance among producers, distributors, users \* \* \* consumers and any other important interests such as State or Federal agencies \* \* \*", is to be appointed to review proposals to amend the recommended standard, as well as to determine future amendment or withdrawal of that standard (Section 10.6).

It is our understanding that in many instances such procedures have worked well in the past. There are two reasons why it may not safely be assumed that this will be so if the proposed legislation is enacted.

(a) Under the proposed legislation the Food and Drug Administration and the Federal Trade Commission will have a critical and legitimate interest in intervening in the standard-making process to make certain that a standard does not conflict with their conception of the public interest, with the provisions of the statutes which they administer or the policies which they have adopted, and that the standards are sufficiently inclusive to attain their regulatory objectives. The interest of those agencies would be perfectly understandable since, under the proposed legislation, once a voluntary standard is published, FDA and FTC may not vary its terms if they determine that it should be made mandatory.

If a standard is proposed by industry to which FDA or FTC has serious objections we cannot doubt that those agencies could and would strongly and successfully object to the adoption of provisions which they considered inadequate or unsound. It is hardly conceivable that they would not participate in the formulation of a standard in which they are interested, as provided in the procedures of the Department of Commerce. If, because of their objections no standard is published or a standard is not published within 18 months of its proposal by a producer or distributor, a mandatory standard may then be established just as if no voluntary standard had been proposed. Moreover, the injection of two different agencies—FDA and the Department of Commerce or FTC and that Department—into standard-making may be expected to result, not only in uneconomic duplication of effort, but in the imposition of duplicate investigations or inquiries into industry practices and technology.

(b) The increasing interest of consumers and consumer organizations in food standardization, labeling, and packaging and the burgeoning number and importance of official consumer representatives and advisors in federal and state governments, assure insistence upon growing consumer participation in the development of voluntary standards. The spotlight of public interest will be thrown upon the voluntary standard-making process as a result of the proposed legislation, if it is enacted, as never before. The prospects of a consensus of industry and consumers (not to mention FDA) upon a standard is, we believe, extremely remote in any controversial matter. The experiences we have had with consumers appearing in FDA regulatory proceedings permits of no other conclusion.

Where no consensus is reached on a voluntary standard FDA or FTC, as the case may be, are free to proceed with the establishment of mandatory regulations.

We believe, therefore, that the effect of the proposed legislation will be to cripple fundamentally the voluntary standard-making process. The procedures for the development of voluntary standards state that the Department of Commerce "acts as an unbiased coordinator in the development of the standard" and "sees that the standard is representative of the views of producers, distributors, users and consumers" (Section 10.0(c)(1) and (4)). This role, we submit, will not be a very effective one where, although the immediate goal of industry is a voluntary standard, the ultimate goal of other interested parties may, and doubtless in many cases will be, a mandatory regulation differing substantially from that of the industry group which made the initial proposal.



## THE PROMOTION OF S. 985

One of the disturbing aspects of this legislation is the kind of promotion which it has received. Permit me to list examples of what I mean, in addition to the widely-advertised "Truth in Packaging" slogan.

1. It has been estimated as an "informed guess" that the bill would save "the consumer" \$250 yearly. In a population of 200 million people (there are actually some 197 million today) this would add up to a total saving of 50 billion dollars per year or  $\frac{1}{2}$  of the 80 billion dollars of all "average family" spending on "kitchen and bathroom" products covered by the bill.<sup>6</sup>

In the recent Senate debate on the bill the \$250 savings figure was related to the "consumer family."<sup>7</sup> If we assume the supposed savings is per family rather than per individual the same 48 million families in the United States would save only 12 billion dollars.

The savings in question have been used as a basis for the claim that the bills are anti-inflationary. If either incredible figure—50 billion or 12 billion—were within measuring distance of fact, it could hardly be denied that the bill would be anti-inflationary.<sup>8</sup>

2. The horrible example of 71 weights and sizes of potato chips has become very popular. This question was posed in the Senate debate: "Where is the Senator who will stand here today and declare the American consumer has demanded that she be confronted with 71 different package weights \* \* \* [of potato chips] when she enters the market?"<sup>9</sup> On its face this direct implication that, upon entering the market, one may be confronted with 71 different weights of potato chips is without substance. In a big supermarket the consumer may be confronted with 5 or 6 different sizes but certainly not with any number of sizes approaching 71. Obviously, given the hygroscopic nature of the product it is a convenience to the consumer to afford her the opportunity to purchase a package whose contents will be consumed before they become stale by absorption of moisture. Different sizes of packages meet this demand.

3. Representations have been made by the sponsors of S. 985 that the proposed legislation is needed because " \* \* \* present law is aimed primarily at preventing fraud and deception in the common law sense", and "The concern of existing law is with the occasional intentionally deceptive practice which has the capacity to deceive the consumer"<sup>10</sup> and " \* \* \* the existing law is premised on the theory that it outlaws conscious deception behind some practice. This requires proof of specific intent \* \* \*"<sup>11</sup> and "S. 985 represents a significant step beyond the traditional policing of intentionally deceptive or fraudulent acts."<sup>12</sup>

Anybody who is familiar with the Food, Drug and Cosmetic Act and the Federal Trade Commission Act knows that neither fraud nor conscious deception are necessary elements of proof of violation. If labeling is found to be either false or misleading, that fact alone is sufficient to support legal proceedings against a product under the Food, Drug and Cosmetic Act. Unfair or deceptive acts or practices are cognizable under the Federal Trade Commission Act regardless of fraud or intent to deceive. The Food, Drug and Cosmetic Act is a stark, liability—without—fault criminal statute. As Justice Frankfurter said in the *Dotterweich* case: "Such legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing \* \* \*." Hardship there doubtless may be under a statute which thus penalizes the transaction though consciousness of wrongdoing be totally wanting."<sup>13</sup>

The reality is, therefore, far removed from the statements above quoted with respect to the nature of present law.

4. It was stated in the course of the Senate debate, with respect to the status of Voluntary Product Standards under S. 985 that: "Only if a standard could

<sup>6</sup> Senator Hart stated: "Various estimates have been made as to how much the consumer would save if this bill [S. 985] were passed. The most popular figure is \$250 yearly". Congressional Record, July 8, 1966, p. 15290.

<sup>7</sup> Senator Mondale, Congressional Record, May 26, 1966, p. 10927.

<sup>8</sup> A lower figure of 4½ billion saving per family has also been given, based upon extrapolation from a survey of purchasing mistakes made by 33 homeowners. *Idem*, June 8, 1966, p. 12065.

<sup>9</sup> *Idem*, June 8, 1966, p. 12070.

<sup>10</sup> Congressional Record, June 2, 1966, p. 11544.

<sup>11</sup> *Idem*, June 8, 1966, p. 12072.

<sup>12</sup> *Idem*, June 2, 1966, p. 11803.

<sup>13</sup> *United States v. Dotterweich*, 320 U.S. 277, 281 (1943).

<sup>14</sup> *Idem*, at 284.

not be agreed upon, or if agreed upon and the standard is not adhered to, could the promulgating authority proceed to the second stage [Section 5(d)(2)] of developing a standard which would be mandatory".<sup>14</sup>

This statement was made in the context of a situation where a determination has been made under Section 5(d) that the weights or quantities in which a commodity is being sold at retail are likely to impair the ability of consumers to make price per unit comparisons. Contrary to the quoted statement, a voluntary standard published after such determination has been made may be made mandatory by FDA or FTC under Section 5(d)(2) without the necessity of a finding that the standard has not been adhered to. At least we find no restriction in the bill which would require such a finding. If, upon the basis of evidence adduced at the prescribed hearing (Section 6), FDA or FTC concludes that the voluntary standard would promote the ability of consumers to make price unit comparisons we can discern no statutory impediment to an order making the standard mandatory.

5. S. 985 has been put forward as a bill to implement the constitutional grant to the Congress of the power to fix the standards of weights and measures.<sup>15</sup> A late reported expression of this theory is that:

"The plain fact is that this is a weights and measures bill—simply a modern-day Congress' way of fulfilling the responsibility of regulating weights and measures given in Article I, Section 8 of the Constitution."<sup>16</sup>

It is a beguiling concept that this bill rests upon Article I, Section 8, but we have found no factual or legal basis to support it. In the first place, the bills obviously go beyond the matter of weights and measures. Secondly, a standard of weight or measure is an original specimen weight or measure sanctioned by the government, such as the international metric bar kept in Paris, which was the original standard of measure of the meter. Such standards are established on the basis of absolutes. Thus, the basic unit of the metric system, the meter, was originally defined as one ten-millionth of the distance from the equator to the true north pole. We must ask, therefore, whether the relationship between packages of various sizes or weights and the real concept of a standard of weights and measures justifies the claim that this is a weights and measures bill in the constitutional sense.

6. We are told that industry is favored by the invocation of the voluntary standards procedure as a basic feature of the proposed legislation. None will maintain that business conditions or regularity requirements remain static so that amendments to regulations are never required. Yet, once either FDA or FTC has made a voluntary standard mandatory—as it may do—the standard may not be revised by the Department of Commerce as voluntary standards may be today. Such a standard may only be amended by FDA or FTC, as the case may be, according to the procedures prescribed in Section 701(e) of the Federal Food, Drug and Cosmetic Act. Until the prescribed procedural steps have been taken—and experience teaches of the burdensome delays involved—innovation with respect to the standardized package is stifled. Obviously, the end result may be negative for the innovator. This prospect clearly would be an effective deterrent, in many instances, even to a proposal for a change.

We say that the examples of the kind of promotion used for S. 985 are disturbing because, if accurate, they would be persuasive of its virtue. Because such representations apparently have been persuasive we felt that it was necessary to straighten out the record.

#### CONCLUSION

We should like to emphasize our conviction that the adverse economic affects of the bill would far outweigh its alleged benefits; that the shifting of marketing decisions from experience manufacturers to government is not in the public interest. We do not understand how two agencies—the Department of Commerce and FDA or that Department and FTC—can successfully fix the same standard of weights, sizes, and quantities of a commodity. Such a concept seems on its face to be impractical and ill-conceived. This is entirely aside from the untoward effect that the contemplated procedure will have, we believe, upon the

<sup>14</sup> Congressional Record, June 2, 1966, p. 11544.

<sup>15</sup> *Idem.*, July 8, 1965, p. 15289.

<sup>16</sup> Senator Hart at a Consumer Conference at the Center of Adult Education, University of Maryland, February 9, 1966.

voluntary standard-making program of the Department of Commerce, for the reasons above stated.

Voluntary standards could be made mandatory at any time. They could then be amended only under the procedures available to FDA or FTC under Section 6 of the bills. Baldly stated, the intended effect of the bills is to force an initial voluntary standard by the threat of a mandatory standard, then to permit the forced voluntary standard to be made mandatory, and thereafter to freeze out any future voluntary standard. We see this as an unfair concept. It is not made more palatable by the manner in which S. 985 has been promoted.

Aside from these unfortunate aspects of the bills, we are distinctly and basically concerned with the stultifying effects which we believe they will have upon the introduction of new types of packaging and the discriminatory results which could come from standardizing one product line while leaving a competing line unregulated. This, we submit, would be bad for business and consumers alike.

The CHAIRMAN. I don't believe you mentioned the first step, that before anything can be done, that there must be a full hearing with all interested parties to give their side, and to be questioned by counsel and everything else such as that, as to whether the size and the weights of the products are confusing, and so confusing as to make price comparisons impossible. That has to be done first, does it not?

Mr. WILLIAMS. Yes, Mr. Chairman. I referred to the fact that the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act are invoked here.

The CHAIRMAN. That is right. Most people don't understand that. These hearings are free and the public and everybody has a right to come in and have his say, and if you can show that it is not confusing to the average person then nothing would be done.

Mr. WILLIAMS. Mr. Chairman, I would not like to have any such regulations as these promulgated without the access of industry to a public hearing.

The CHAIRMAN. That is right.

Mr. WILLIAMS. And the access of any other interested parties.

The CHAIRMAN. That is right.

Mr. WILLIAMS. But I should like to say to you that that is one of the problems which is involved from the standpoint of the stultifying effect of such a bill upon innovation. How can you possibly innovate, if it is going to take you maybe 6 years or 10 years to get an amendment to a standard?

I have recently participated in a standard-making procedure before the Food and Drug Administration which began in 1957 and which is just now ending. It hasn't ended because the briefs on the last hearing have just been filed.

The CHAIRMAN. What was that?

Mr. WILLIAMS. The Food and Drug Administration.

The CHAIRMAN. Will you tell my counsel up here a little later what this is, so we can look into it and see what is going on?

Mr. WILLIAMS. It is the orange juice standards.

The CHAIRMAN. Do this later. This is a function of the committee to look into it.

Mr. WILLIAMS. Yes, sir; I will be glad to. I can name others if you would like to hear it.

The CHAIRMAN. We might be helpful to you.

Mr. WILLIAMS. He might also look into the peanut butter standard, Mr. Chairman. It started July 2, 1959.

The CHAIRMAN: Maybe we can look at it. But I wanted everyone here present and this committee to know that you just don't arbitrarily move in and say this is going to be done or else. That is not true, because there must be a finding that there is something going on that is confusing and wrong, and to make such a finding there must be a hearing, and it is an open hearing, as you know.

There is nothing hidden behind the boards that they are going to say, "All right, we are just going to put this on you," and then you have recourse to the courts, too, if this is done.

I just wanted it to be known that there isn't the purpose to put something on the industry without proper procedures and proper protection and everything. According to the bill there must be a formal finding that it is confusing so that the consumer cannot make hard-price comparisons. It is just not to start some innovation, and I don't think there is one member on this committee who would want that or would stand for it.

Mr. WILLIAMS. I don't think so either, Mr. Chairman. That is why I made the point.

The CHAIRMAN. Yes. Mr. Friedel?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. The problem is this third one. There are two problems which are talked about, with candy, but there is another one that comes out here, and that is ability to compete. Now, I don't know whether this cost thing can be solved without the clarification of this committee, unless we can get into the problems of competition.

I had a statement here this morning which I can't seem to find, but I think Mr. Younger took that back upstairs with him, but the statement was by a producer of a certain type of margarine in 1-pound packages, where it didn't take any freezing.

You could put it in your refrigerator. They spent a couple of years in the marketing features alone on this question of being able to market margarine either in a tube or you could squeeze it out, but it would run. You didn't have to thaw it out in order to make it usable.

They found out that the only way in which they could make this attractive was in one-half pounds. But the startling thing of it was this competitive factor. This was the part that started me thinking.

They spent all this time getting into it, all this time working on it, and then they came out on the market with the one-half pound, and they were rather surprised at the results. They were even better than they thought they would be. But it wasn't but about 6 months until they had two or three competitors who were on the market with the same thing. But in the meantime they had this momentum under their particular product, and were carrying it forward.

But the thing that startled me was that if the Federal Trade Commission had set up a quarter of a pound or three-quarters of a pound, or so many ounces in a package it had to come in, they would have had to come in and get the regulations changed, in order to market this in a way where it would be salable, because it was a new product.

This was a product brought onto the market for the first time, but which proved to be not only a little cheaper but it was much more

facile and easy to handle by the housewife, because here was a revolutionary process.

But then, when they went on to define what they would have to do, to go in and produce all this information, in which they would ask for something that hadn't been marketed in that particular weight, and to spread this on the record is what they would have had to do, in which case, the two or four major competitors would have immediately grasped this idea and gone ahead with it.

Mr. WILLIAMS. They would not have had the jump on the market to which you referred. The one who initiated the half-pound would not have had the jump on the market, because we would have had to go to the Department of Commerce and reveal all of these things to the Department.

Mr. SPRINGER. All of these facts in reference to their product.

Mr. WILLIAMS. And to Food and Drug.

Mr. SPRINGER. This would immediately be available to their competitors before he ever sold a half-pound of margarine. Now these are situations, and I am wondering if you get into this, if you get into these involvements, whether we are going to continue to have the competitive feature, which I say has not only made our market more attractive and easier to use by the housewife in this packaging thing, which has been revolutionary since the end of World War II, but the question also of the competitive factor of coming with a cheaper product, not only a product that may be easier to use but a product that may be even cheaper.

But under his situation as he revealed there, had you had standardized packaging at the time he brought his article onto the market, he would have had to go in and petition for a new weight, in order to market his product; and thereby reveal all of his product to his competitors.

Now, this is one of the impacts of this bill, and I want to be sure we have got this on the record, so that the committee can see this crystal clear.

Now, this is just another problem which I got out of this man's own particular matter of trying to feel a new product on the market. I can visualize in the future, products coming on which would be only attractive or, as he said, only salable, after doing a year and a half of experimenting. This is the only way in which they felt they could make this product attractive and salable.

Mr. WILLIAMS. And, Mr. Springer, may I add to that that even if he had no trade secret to conceal, as did the manufacturers of whom you are speaking, if he had gone to the Department of Commerce and asked for a new weight, shall we say, or a new size or a new dimensional proportion, and his competitors did not want him to have it, or the Food and Drug Administration or the Federal Trade Commission, as the case may be, did not want him to have it, they could stall this thing for 18 months, and then he would have nothing, and Food and Drug could go ahead if they wanted to and set a different size.

Mr. SPRINGER. This is just one of the things I wanted to get out here on the record on this question of whether or not we are going to have new products. Now, I take it, looking into the future, and what startled me, I got to thinking what about the question of a brandnew

product or products which are going to be brought on the market in the future, where experimentation and research shows that only in certain sizes would it be salable or would it be salable so that they could make it work. This is just one of the things I wanted to bring out.

Some of those thing you have touched on, I have read the Senate record of debate, and I am familiar with some of those things which you mentioned, where there was practically a misrepresentation of what was in this bill that the Senate passed. Very obviously, those two or three Senators who spoke on those things, didn't know what was in the bill. Not even their staff had read it well enough to advise them what was in the bill.

I think your statement is very, very revealing. Thank you.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

I want to congratulate you, Mr. Williams, on a very fine presentation of your point of view. Some of it isn't quite clear to me, however.

On page 16 you talk about this bill not being a weights and measures bill in a constitutional sense. Are you saying by inference that this bill, if passed by the House and signed by the President, will become unconstitutional or declared unconstitutional?

Mr. WILLIAMS. Oh, now, sir. I think this bill is based on the commerce clause, and I have no doubt that it would be upheld in its basic and fundamental aspects.

What I was saying was that this is just another example of the beguiling representations which have been made with respect to it, that here is the provision of the Constitution, and we are merely carrying it out. It just isn't so, so far as I have been able to discover.

Mr. MACDONALD. If this committee were not carrying out the law as set forth by the Constitution, then we would be acting unconstitutionally, no matter that anyone said it in beguiling tones or terms or not.

Mr. WILLIAMS. But the commerce clause does not specify, does not make provisions for the establishment by the Congress of regulations such as those here provided. The commerce clause authorizes that, but the interesting aspect of the statements which have been made are that here is the Constitution saying you have the authority to pass weights and measures legislation. It is this simple. That is all we are doing. It is a neat little concept. It is a good sales gimmick, Mr. Macdonald. That is all.

Mr. MACDONALD. Even you would not dispute that we don't have the authority to pass a bill such as this.

Mr. WILLIAMS. No, sir; a bill such as this.

Mr. MACDONALD. Second, speaking of law cases, and you are talking about some case pending before regulatory agencies from 1957, you know as well as I do that either side can delay in coming to a final decision, by asking for more time, by asking for conferences, et cetera, and I am sure you would not want to be unfair and say that the whole delay from 1957 was because of the regulatory agency.

Mr. WILLIAMS. No, sir. The delay stems basically from the controversy involved, the fact that you are dealing with a controversial matter, and that is the point I was making, that in a controversial

matter, in a situation where there is great controversy, it will take maybe years to get an amendment to get one of these standards. It may take less on occasion. It may be simple to do under some circumstances.

Mr. MACDONALD. You would agree then, in the interests of saving time and not putting an undue burden on these regulatory agencies, that it is a pretty good approach, isn't it, to regulating an industry rather than by on a case-by-case basis?

Mr. WILLIAMS. No, sir; I wouldn't agree to that.

Mr. MACDONALD. Don't you agree that that would save time in the overall?

Mr. WILLIAMS. It might save time for the agency.

Mr. MACDONALD. Because it does save time for the agency, it therefore frees them to reach other matters.

Mr. WILLIAMS. It places a burden on the industry, which we believe is not a reasonable burden, where you are dealing, as in this type of situation, with 6,000 to 8,000 different kinds of packages.

We don't know how many they are going to attempt to standardize or how they are going to do it. The fact that we have no idea what they are going to do, because they have such broad authority, is one reason that it is so difficult to come up with cost figures. If they are willing to figure out in advance what they are going to do and come up with cost figures it would be very helpful to the committee.

Mr. MACDONALD. You, of course, are stating a very obvious fact, one which we went through when discussing the matter with the panel. I don't know if you were here or not. But I was also interested in whom you represent. You say you represent the National Association of Frozen Food Packers. Is that orange juice or is that vegetables, or is that everything?

Mr. WILLIAMS. Yes; that is primarily vegetables, frozen vegetables, frozen fruits, frozen juices, including orange juice, and frozen prepared foods.

Mr. MACDONALD. Like TV dinners?

Mr. WILLIAMS. Yes; that sort of thing.

Mr. MACDONALD. Have any of your members of your association had any difficulties with even the FDA or the FTC regarding regulations issued by either of those regulatory agencies?

Mr. WILLIAMS. I am not certain what you mean, Mr. Macdonald.

Mr. MACDONALD. What I am asking specifically is about this orange juice controversy: Did the FTC say you should stop doing certain things that some of your members might have been doing.

Mr. WILLIAMS. No, sir. As a matter of fact, in 1956 and 1957, Kraft Foods on the one hand, and the National Association of Frozen Food Packers on the other, proposed themselves standards for various orange juice products, because we felt that they were needed, and that it would be feasible for the Food and Drug Administration to deal with them. It was not a Food and Drug proposal. It was an industry proposal.

Mr. MACDONALD. And was it accepted by the regulatory agency, the proposal?

Mr. WILLIAMS. This year the last hearing was held. Briefs have been filed. No final order on this last proceeding has issued. An

order was issued on the principal proceeding, and I believe in 1964, which was so controversial that it had to be reopened.

MACDONALD. Did a part of this controversy go to the labeling of the cans or packages?

Mr. WILLIAMS. Yes, sir.

Mr. MACDONALD. As you know, this bill only goes to those people who label or stamp cans in such a way before they are sold in the retail stores, which are likely to deceive retail purchasers, and I am sure that none of your people, your membership, deceive consumers, do they?

Mr. WILLIAMS. I wouldn't be so sure that every frozen food packer is entirely virtuous, Mr. Macdonald.

Mr. MACDONALD. I thought your being their advocate, that you would perhaps think so.

Mr. WILLIAMS. I think we have a very good record.

Mr. MACDONALD. I am sure you do.

Mr. WILLIAMS. Rather better than most.

Mr. MACDONALD. But the fact that there are some people in that business who maybe take a shortcut here or there or maybe mislabel, or do not have the proper amounts in the cans, that that presents a problem for this committee.

Mr. WILLIAMS. Mr. Macdonald, I don't understand why it does, in view of the present authority which is available to the Food and Drug Administration, and which they exercise.

Mr. MACDONALD. In many ways this is more favorable to you. There is no seizure under this bill, is there?

Mr. WILLIAMS. Yes, sir.

Mr. MACDONALD. There is seizure?

Mr. WILLIAMS. Yes, sir.

Mr. MACDONALD. How can the Federal Trade Commission seize?

Mr. WILLIAMS. The Federal Trade Commission doesn't, but we were talking about labeling, which is under the jurisdiction of the Food and Drug Administration, which does have the seizure power.

Mr. MACDONALD. I have got news for you, that labeling comes under the Federal Trade Commission.

Mr. WILLIAMS. Will you explain to me just what you mean by that?

Mr. MACDONALD. I think it is perfectly simple. I just repeat the words that I said, that the Federal Trade Commission has jurisdiction over advertising and labeling.

Mr. WILLIAMS. The Federal Trade Commission, if you will permit me to say so, has jurisdiction over unfair and deceptive practices in commerce.

Mr. MACDONALD. That is correct.

Mr. WILLIAMS. To the extent that that—incidentally, that includes labeling. Perhaps they might indirectly control it, but in the advertising provisions of the Federal Trade Commission Act, the definition of advertising explicitly excludes the labeling from their jurisdiction. That is the Wheeler-Lee Act of 1938, which was a companion bill, in effect, to the Food, Drug, and Cosmetic Act.

Mr. MACDONALD. The only time that the Federal Trade representatives have been before this committee, including the cigarette period, that they were not correct in stating they have the authority without the special provision of Congress—



Mr. WILLIAMS. I am sorry, sir?

Mr. MACDONALD. They had the authority to label, to promulgate regulations of labeling.

Mr. WILLIAMS. I am sorry, Mr. Macdonald, they were talking about products other than foods, drugs, and cosmetics, and we, I thought, were talking about foods.

Mr. MACDONALD. Well, I don't know whether orange juice is food or not.

Mr. WILLIAMS. Yes, sir; it is.

Mr. MACDONALD. Who decided that?

Mr. WILLIAMS. I think it has been assumed for some time.

Mr. MACDONALD. It is an assumption that isn't shared by everybody, thinking of orange juice as a food. I would think it would be a drink.

Mr. WILLIAMS. It is a food under the definition of that term under the Food, Drug, and Cosmetic Act.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. I would like to mention, however, that in some of the packages of frozen foods there have been times that it is bigger on the cover than it is after opening the package.

Mr. WILLIAMS. Mr. Nelsen, I have no doubt that where such situations exist, they are within the present jurisdiction of the Food and Drug Administration.

Mr. NELSEN. I understand. Now I might make this other observation, too: That in examining packages that have come before the committee, I think that there could be a little bit better job done of marking quantity and price in a more readable way. Many times you have to hunt for it. I am sure this is something that could be done without passing any laws, and perhaps should be encouraged.

Now the thing that I would like to refer to is your statement on page 14 where you refer to "anybody who is familiar with the Food, Drug and Cosmetic Act and the Federal Trade Commission Act knows that neither fraud or conscious deception are necessary of proof of violation."

I have been pursuing the idea that under the enforcement proceedings of this bill, that the Federal Trade Commission Act comes into play. On page 12 it points out that section 5(a) of the Federal Trade Commission Act will be the section under which enforcement is brought into play. In this particular case, it points out the procedure, and finally sums it up by saying that with any person or partnership or corporation, they can order or require such person, partnership or corporation to cease and desist from using the method that they have declared to be in violation.

Now it is my understanding that under the terms of this bill, the rules are going to be promulgated by industry cooperation. But in the event they do not reach agreement, then the authority in charge will establish a rule, is that not true?

Mr. WILLIAMS. Yes, sir.

Mr. NELSEN. And then if they in turn decide under the rule that they established there is a violation of their rule, then they can, in turn, under section 5(a) of the Federal Trade Commission Act, bring action against you, causing you to cease and desist a practice which may be

an innovation in the merchandising field which could work great hardship, is that true?

Mr. WILLIAMS. Yes, sir; that is true.

Mr. NELSEN. And there has been some disagreement here in the hearing as to cease-and-desist authorities, and it seems to me it is quite clear, after researching it a bit, that the authorities would have the right to cease and desist. Then you would have to come in, in court, to prove that they are wrong and you are right, in order to continue a practice which you may have employed. Is that not right?

In other words, if an innovation comes along that your company or the company you represent becomes a practice which they have determined to be a violation, the only way that you could continue it is to go to bring action against them, really, or against the Government, to get permission to continue with it.

Mr. WILLIAMS. May I attempt to state what I think the effect of the bill is, Mr. Nelsen?

Mr. NELSEN. Please do.

Mr. WILLIAMS. The bill would authorize the Federal Trade Commission in this instance to establish regulations, shall we say, with respect to weights, sizes or quantities, in which the commodity may be sold in commerce. If the Federal Trade Commission finds that in its opinion there has been a violation of this regulation, shall we say, by the use of the weight other than those fixed by it, then they may issue a complaint against the respondent. The respondent will then come in, but all the Federal Trade Commission would have to do in such a situation is to prove that he did sell in commerce a commodity in a weight, with a weight which was not fixed by the Federal Trade Commission.

They would not have to prove that there was a violation of the Federal Trade Commission Act, but that there was a violation of the regulation, and that should be in most instances relatively simple, as you have pointed out.

Mr. NELSEN. One further question. Under the terms of this bill, weights would not be the only factor, is that not true? If we are seeking to get at deceptive packaging, would that not also be added to the rulemaking objective, which could also be punished under section 5(a) of the Federal Trade Commission Act? Doesn't it go broader than the old law, even with the additions this bill will provide?

Mr. WILLIAMS. Do you mean, does this bill go further than the present Federal Trade Commission Act?

Mr. NELSEN. Yes.

Mr. WILLIAMS. The Federal Trade Commission Act extends to unfair or deceptive practices and to false advertising.

Mr. NELSEN. Yes.

Mr. WILLIAMS. As defined in that act. This act would authorize affirmative standard-making dealing with weights, sizes, shapes, and dimensional proportions of commodities. I think Mr. Dixon made it clear that he was willing to attempt to deal with these matters, under his authority, or, rather, administrative provisions relating to rules which would be industrywide. Whether that would be supported in court, I don't know.

Mr. NELSEN. I am referring to page 12:

Any violations of any provisions of this Act or the regulations issued pursuant to this Act with respect to any consumer commodity which is not a food, drug, device or cosmetics shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a).

In other words, a deceptive package, if it is deemed to be deceptive by the rule as established and promulgated, then under section 5(a) of the Federal Trade Commission Act, you would be punished as you have been punished for what the previous act provided, as I understand this bill.

Mr. WILLIAMS. Yes, that is correct.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Do you have any members of your association that put out meat products, poultry products, and fish products, or not?

Mr. WILLIAMS. Yes, sir. There are a number that do.

Mr. ROGERS of Florida. Which?

Mr. WILLIAMS. Frozen meat pies, TV dinners.

Mr. ROGERS of Florida. Do they have to go before the Department of Agriculture?

Mr. WILLIAMS. The meat products are subject to inspection by the Department of Agriculture.

Mr. ROGERS of Florida. So they actually would not be covered under this bill?

Mr. WILLIAMS. As I understand it, they are excluded.

Mr. ROGERS of Florida. What about fish products? Is that under Interior? I presume you have some who have frozen fish products?

Mr. WILLIAMS. I don't believe that fish products are excluded. I would have to check that.

Mr. ROGERS of Florida. No, they are not excluded under the act, but don't you have to go to the Interior Department now for fish, just as you do to the Agriculture Department for meat?

Mr. WILLIAMS. I really am not familiar with that, Mr. Rogers.

Mr. ROGERS of Florida. I will take that up with someone else. Do you see that there is great overlap between this bill and the present law?

Mr. WILLIAMS. I do in section 4 and in parts of section 5.

Mr. ROGERS of Florida. In other words, Food and Drug, under some things that I could think of here, because there is such an overlap, they could enforce criminal penalties if they wanted to, because of the broad provisions of the present act, don't you think?

Mr. WILLIAMS. They would have to do it under present law.

Mr. ROGERS of Florida. Agreed, but it is simply an administrative determination which way they will proceed against you.

Mr. WILLIAMS. That is correct. And, under this, if I were in their position, I would just wonder which way to proceed, because some of the sense of the language here is different from some of the provisions in the Food, Drug, and Cosmetic Act, and the Federal Trade Commission Act. I would be in a quandary, frankly.

Mr. ROGERS of Florida. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Would you, as I have asked with the canners and the others, submit your proposal as to what you think might be necessary to allow for an innovation or a variation from a standard? In other words, you have mentioned that you do not believe the present procedures would be adequate to allow a product to come on the market. Would you like a 6-month period that anything could be marketed first or some variation like that? Will you submit that for the record to us?

Mr. WILLIAMS. We will be glad to see what we can come up with.

Mr. ADAMS. Thank you; now, the second thing. I noticed that you did not bring in a number of packages and so on that some of the others did. Is there any standard, for example, on peas or beans that are frozen and come in those little packages?

Mr. WILLIAMS. There is no governmental standard except a voluntary standard which was worked out with the Department of Commerce in the 1950's. I believe 1950 was the last version of it.

Mr. ADAMS. Actually, the package sizes are standardized, are they not, with the weights varying?

Mr. WILLIAMS. I think that ordinarily vegetables are marketed in packages of 8, 10, 12, and 16 ounces.

Mr. ADAMS. Packages of 8, 10, 12, and 16 ounces?

Mr. WILLIAMS. The 16-ounce package is less usually seen today.

Mr. ADAMS. I have just got a minute, but I will ask you this. You went into quite a lengthy discussion with regard to the matter of publishing standards and how they would be established. Do you agree with this: that first there must be a hearing under the Administrative Procedure Act, before—this is a hearing not under the other provisions, but under the Administrative Procedure Act—before there could be a determination that there was something wrong in the industry?

Mr. WILLIAMS. You mean, before the mandatory standard proceeding could be instituted?

Mr. ADAMS. No, before they could even come out and promulgate that they were going to publish a determination that something was wrong in the industry.

Mr. WILLIAMS. You are talking about section 5(d), aren't you, Mr. Adams?

Mr. ADAMS. No, I am talking actually about the first part of section 5(d).

Mr. WILLIAMS. Yes, sir.

Mr. ADAMS. The first paragraph.

Mr. WILLIAMS. Yes, sir.

Mr. ADAMS. Is that correct?

Mr. WILLIAMS. Yes, sir; that is correct.

Mr. ADAMS. Then they publish that there is something wrong. Then the standard comes in, and there is then a hearing to be held, but prior to the hearing, if there is a voluntary standard, they must follow that. And if there isn't a voluntary standard, then industry has a year to create one, isn't that correct, before there can be any mandatory regulation published?

Mr. WILLIAMS. If there is an application by—

Mr. ADAMS. By anybody.

Mr. WILLIAMS. It doesn't say anybody.

Mr. ADAMS. By anybody in the industry. Producer or distributor.

Mr. WILLIAMS. Producer or distributor; yes, sir.

Mr. ADAMS. So they have another year to put in the standards before they can publish any mandatory regulation. Then, after that, they can put in the regulation, but it is limited by (e), (f), and (g), which protect customary, under (d), it protects the voluntary products standard under (e), and it sets a series of limitations under (g), on weights and measures customarily used in the packages of affected products. So they are limited in doing that, aren't they?

Mr. WILLIAMS. That is correct.

Mr. ADAMS. And then, after all of that is done, if you still don't like it, you can come in under section 6 and review this in the courts.

Mr. WILLIAMS. I am not sure we have—

Mr. ADAMS. Regulations promulgated by the Commission under section 405 shall be subject to judicial review by proceedings taken in conformity with, and that is actually 21 U.S.C. 321 (e), (f), and (g).

Mr. WILLIAMS. At one time or another there is an opportunity to go to court; yes, sir.

Mr. ADAMS. All right. Now, out of this whole process, is it the position of your industry that this is going to end up with a series of very arbitrary standards?

Mr. WILLIAMS. I think it is likely that there will be considerable arbitrariness on the basis of the experience we have had, and one thing that worries us is the extent of the problem which faces the regulatory agencies under this bill, as distinguished from the kind of problems they are accustomed to dealing with.

And may I say that so far as my experience teaches me, I would be very much surprised if, in any controversial matter, there could ever be a standard in a year or 18 months, or 2 years agreed upon before the Department of Commerce by consumers, the Food and Drug Administration or the Federal Trade Commission and industry.

Mr. ADAMS. I agree. What about the broad area of noncontroversial matters, on such things as just a package size or a standard weight size which everybody agrees on.

Mr. WILLIAMS. Surely we don't need agreement if everybody is in agreement, Mr. Adams.

Mr. ADAMS. What I am saying though, is that you have substantial areas of agreement within the industry, and all we want to try to do out of this is get some basic standard so the public can see it, and you can fight about the controversial parts of the industry.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Before you leave, Mr. Williams; you referred awhile ago to orange juice and peanut butter. Doesn't that have to do with the quality standards?

Mr. WILLIAMS. No, sir. That was the standard defining the food, a definition and standard of identity.

The CHAIRMAN. And not to do with quality?

Mr. WILLIAMS. No, sir; it had to do with quality in a sense, in the sense that any definition must have some quality level in it. There must be some quality level.

The CHAIRMAN. This bill doesn't have anything to do with quality.  
Mr. WILLIAMS. This bill?

The CHAIRMAN. Yes.

Mr. WILLIAMS. No, it doesn't have anything to do with quality.

The CHAIRMAN. It wouldn't cover those proceeding under this.

Mr. WILLIAMS. Unless, Mr. Chairman—perhaps, I spoke too quickly. I don't find it now, but there is one section here which I believe Mr. Dixon—perhaps I shouldn't attribute it to him.

The CHAIRMAN. No, he mentioned the word "quality" and then took it back.

Mr. WILLIAMS. Yes. Then he mentioned it again and said maybe he had been wrong the second time. I am thinking of section 5(c) (4). I believe that that is susceptible of interpretations which might encourage the agencies to go into the matters of quality—

The CHAIRMAN. That wasn't the intent of the bill. There was a difference in the proceedings.

Thank you so very much. You have been enlightening to the committee, and we appreciate your taking the time to come before us to give us the benefit of your views.

Mr. WILLIAMS. Thank you very much.

The CHAIRMAN. The committee will stand adjourned until next Tuesday at 10 o'clock.

(Whereupon, at 12:30 p.m., the committee adjourned to reconvene on Tuesday, August 9, 1966, at 10 a.m.)

## FAIR PACKAGING AND LABELING

TUESDAY, AUGUST 16, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Today we return to a subject which was sidetracked for a time by a matter of considerable importance. The airlines dispute seems somewhat elusive. I hope that this "truth in packaging" proposal before us will clear up more rapidly, as testimony sheds further light before us and the wherefores of the supercolossal containers and so forth are made clear.

The mathematical complexities of the fractions of a milligram involved in the comparing of costs of competing articles of merchandise may tie us into knots of puzzlement, but should hardly raise our blood pressure appreciably.

Perhaps most of us lost sight of the evidence presented to us during previous hearings on this subject, but it does not seem necessary to review that evidence at this point.

We will proceed with the matter at once and our first witness will be our colleague from the great State of Arkansas, Mr. E. C. Gathings. Mr. Gathings, will you please come forward and we are glad to have you. We are glad you were willing to take up your time. We know you are doing a good job in your committee for the Congress and for your people and we are certainly happy to have you appear before this committee.

### STATEMENT OF HON. E. C. GATHINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. GATHINGS. I am grateful to you, Mr. Chairman, for permitting me this opportunity to come this morning and give my views with respect to this legislation. I don't pose as an authority on labeling, but I come as a layman and I want to say to you that for many, many years on Saturday my job is to do the marketing. I have done that for some 25 years, every Saturday. That is the only recreation I get and I enjoy it very much.

Now, there is a reason for this legislation being here, no doubt, because you folks are dedicated people and you are trying to see to it that the housewife is going to get just what she buys. What she looks

upon the label to see, she wants to get that inside, to be sure that the contents will reflect just exactly what that label says it will contain.

My experience in the purchase of food is the only thing that I will testify about this morning. When I go to the store, I compare prices as well as quality. In this hand is a bottle of Ritter tomato catsup. Ritter is a good brand and it sells for two for 41 cents. That is 22 cents for one bottle of Ritter catsup.

Now, Del Monte is two for 45 cents. They are both good—I have tried them. But Del Monte is a preference of mine and I will pay just a little bit more to get this piece of merchandise here which would sell for 23 cents or two for 45 cents. They are identical in size. They are both 14 ounces avoirdupois.

Now when it comes to asparagus, we have Ritter again. Ritter has a very fine asparagus for 29 cents. On here it shows net contents equals 15 ounces avoirdupois, cut spears, all green, tips included.

Aunt Nellie's comes along and this is distributed by the Giant people and I shop at Giant's every Saturday, along with other stores. I go to an A. & P. and Safeway regularly too—not every week—because there are certain products that I like at each store.

I used to go every so often to get my dog certain foods at Grand Union. In any event, Aunt Nellie's is 33 cents, and it is a competing product. This is all green asparagus too and it is a very fine product.

Now, let us look for just a moment at these items right here—canned tomatoes. This is Aunt Nellie's again, two for 39 cents. That is net weight 1 pound. There is a trace of calcium salt added and a picture of a tomato. You open that can, and that tomato will look just about like that, I will tell you that, except it does not have the green stem on it.

Now that is two for 39 cents. But if you want to buy the Del Monte, you go to 33 cents a can. That is just when you have company that I would want to get Del Monte. But they are both good products and they tell the story on the labels. The net weight is 1 pound.

Now, Mr. Chairman, the housewife is a smart individual and when she has a large family she wants to see to it that they get a bargain in what she buys. She wants that dollar to go as far as it will go. The system we have now assures good values for all of our people.

Here is a hominy, two for 29 cents. Van Camp, and that is a good name in foods, comes up with a hominy which is two for 39 cents. It is 20 cents for this large one here. That is compared to the small one costing 15 cents. But you get so much more hominy by buying the large can.

Last night's paper brought out the food bargains for the next 3 days, through Wednesday. On Thursday, the food section of both the Washington Post, and the Evening Star comes out. That is the time that the housewife starts to make her selections for the weekend. She does her buying for the weekend from the Thursday paper. These are early purchases here.

You can go to the A. & P. and get these bargains, this shoulder of veal roast for 49 cents and so on.

This is Libby's tomato juice, 25 cents for a 14-ounce package. Don't think that these housewives don't know where these bargains are, too. Chuck steak is 49 cents at Giant. That expires Wednesday night, I believe.



They have a good buy now on grapes, seedless grapes, and I bought some grapes last Saturday. Here is what I wanted to show you. They are opening up a new Safeway store so they put a full page ad in the paper last night. You can get boneless beef roast for 99 cents. That beef roast would cost you ordinarily, without a special on it, \$1.29 a pound. Here is quite a saving.

So the housewife will go to that store if she is a beef buyer. She is going to buy at Safeway.

Now I wanted to call your attention to one item that is in this legislation that I wanted to touch on just for a minute. That is that I understand this legislation would prohibit the "4 cents off," or "10 cents off" on the package. It would be a prohibition, if this bill is passed, like it is now written. Chase & Sanborn has that on here. It puts this package on the market which says "4 cents off."

Mr. FRIEDEL. Off of what?

Mr. GATHINGS. It says "4 cents off."

Mr. FRIEDEL. But "off of what"?

Mr. GATHINGS. I will answer that right here. Here is a Maxwell House jar which is 2 ounces net weight and here is a Chase & Sanborn of 2 ounces net weight, and they are competing products. One coffee is about as good as the other. It is just a question of taste.

Now, Maxwell House is 49 cents for that 2 ounces. Chase and Sanborn is 4 cents off, and it says underneath, 45 cents. It tells the truth. It is 4 cents off. It is 4 cents off of the regular price of the same competing product, and when this special goes off I will say to Mr. Friedel, this product here will bring the same figure of 49 cents instead of 45 cents. This is an introductory offer. It aids the poor people.

Mr. FRIEDEL. In other words, the price there is 45 cents but it has a label on it "4 cents off." That is not 4 cents off the 45 cents?

Mr. GATHINGS. No, sir, it is marked on the bottom just what it will bring. But you will have to look next to it on the shelf and you will see why it is marked 4 cents off, because here is a price of 49 cents for another comparable brand.

The housewife knows that, and the housewife wants that dollar to go as far as it is possible for it to go.

So, Mr. Chairman, I just wanted to call to your attention that this merchandise, as it stands, tells what is inside. About one-third of that label on Del Monte peeled tomatoes is set aside for the purpose of saying to the consuming public that these peeled tomatoes have a trace of calcium salt, size of can is 303, net weight 1 pound, and cups approximately two, and servings three to four, and lightly seasoned with salt. It tells the story. You can rely upon it.

Now, in my way of thinking this legislation is not needed so far as food purchases are concerned. As to drugs and what is on the label of various merchandise in a drugstore, I am not too familiar with that. This bill will create new authority to deal with a question or issue that has solved itself.

The CHAIRMAN. Has the gentleman finished his testimony?

Mr. GATHINGS. That concludes my testimony.

The CHAIRMAN. I would like to ask you just two questions. As to the "4 cents off" on coffee, assuming a small store bought an over-supply and this runs into 10 years or 3 years or 1 year or half a year

and the price of coffee goes up meanwhile. It is still 4 cents off from where it goes off to, or it goes down and it is still 4 cents off, or what?

Mr. GATHINGS. Generally, Mr. Chairman, that merchandise is replenished every other day or every 3 days or quite frequently. The bargain item has a limitation as to time.

The CHAIRMAN. You mean to say they don't buy a supply for more than a day or so at a time?

Mr. GATHINGS. It won't take long for all of these "4 cents off" purchases to be made by the housewife and you have another leader coming along periodically.

The CHAIRMAN. I think we are going to have to go to these stores and find out how long these do have supplies. I think most of them buy supplies for a much longer period of time than that.

Mr. GATHINGS. Well, it could be, it depends on the product, but the bargains move pretty fast.

The CHAIRMAN. We had testimony in here of potatoes that went up over \$20 a hundredweight in a period. I don't remember exactly the period but it wasn't long, a year or two. They were put up in the same kind of a box almost, but they were reduced a little bit in weight and then the price would go up or down. But ultimately they had raised \$30 a hundred.

Do you think that that is truth in packaging?

Mr. GATHINGS. I am not familiar with the particular instance that you bring up.

The CHAIRMAN. Well, do you think that there are instances of cereals where the box was only so much filled? Do you think that would be deceptive if it was only two-thirds filled or not?

Mr. GATHINGS. I will tell you in many instances, Mr. Chairman, you will find in cereals that they will fill that box up fairly full when it is packaged, and by the shaking and packing down you will find that there will be some space at the top.

The CHAIRMAN. We had two similar packages. One was at the top and one was down one-third. Does this only happen in certain brands?

Mr. GATHINGS. The next time the housewife finds that it is too low in that package, she will say, "Well, let us try Kellogg's," or "let us try Post's next time."

The CHAIRMAN. Is it deceptive to the public? That is what we are trying to get at. We are trying to find out whether these things are being done to deceive the public.

Mr. GATHINGS. Well, that is the purpose of your hearing, and that is the purpose of going into all of these phases of the problem and hearing these witnesses. But I do know that there is no deceit in these packages here, because they are plainly marked what it is and what quantity of the item is in the package.

As to the weight of the cereal, if you weigh it you will find that it speaks the truth.

The CHAIRMAN. I would agree with you on a great percentage of the ones who supply this Nation's food, that there is no attempt to deceive or no false labeling. But there is some percentage where we find there are some deceptions. That is what we are trying to get at.

Mr. GATHINGS. I imagine that there are some deceptions, or this bill never would have been introduced in the Senate and the House, and passed the Senate as I understand.

The CHAIRMAN. I believe unanimously, but I am not sure.

Mr. GATHINGS. I think, Mr. Chairman, that there are very few instances where the public is being deceived. The percentage is very small.

The CHAIRMAN. Do you think that it is up to this committee to find out whether there is deception and try to cure it or let it go on?

Mr. GATHINGS. I am not a member of this committee, and that is up to you. You folks are reasonable people.

The CHAIRMAN. You are a witness to help us determine what we should do. You wouldn't be here if you were not here trying to influence our judgment here.

Mr. GATHINGS. That is right. I am telling you what I have found from my many, many years of experience in buying groceries.

The CHAIRMAN. If we find deception now and things not marked right, shouldn't we try to correct it as a Congress, or not?

Mr. GATHINGS. Now, you will find in every line of endeavor some rascality being practiced. You will find that there is nothing perfect. But now you will find this: That in many, many instances, as against maybe a few, there is no deceit.

The CHAIRMAN. According to that, because most of our citizens are law-abiding citizens, we don't need policemen.

Mr. GATHINGS. The thing about it is that you don't need to legislate in a field where everything is smooth and everything is going along smoothly.

The CHAIRMAN. You will agree most citizens are law-abiding citizens, and according to that they or I, we don't need any policemen at all.

Mr. GATHINGS. But I don't believe the housewife needs to be taken by the hand and told what is in a can or what is in a package of soup, or laundry soap. She is pretty well advised. She knows what she is doing.

The CHAIRMAN. There are many instances, we will agree with you, but you still say you think just because most of them maybe keep the law and don't try to deceive, we don't need any law?

Mr. GATHINGS. You might find an instance occasionally, but it will be a rare case.

The CHAIRMAN. I believe if you had heard some of the witnesses here that you would find that they are not so rare, and there are a lot of them that do occur. We are not trying to control the industry, but they are saying by giving them complete freedom they call it a license to do what they please. Those are the ones we are trying to find out. It is not the ones who are honest and sincere. We realize that.

Mr. GATHINGS. I realize that you are going to be reasonable.

The CHAIRMAN. We hope so.

Mr. FRIEDEL. I have no questions, but I would like to compliment my colleague and I am going to appoint him to do my shopping because evidently he is very well versed on the subject.

But we will agree that there are some "gimmicks" and the public is fooled by some of them. That is the thing we want to stop, and I think we can stop it. We know that all packages should state the weight. We don't want to try to hurt the industry that is trying to do the right thing.

But there are certain gimmicks in labeling and deceptive things which the public has to be protected against, and we intend to do that.

Mr. GATHINGS. I think the public ought to rely on it. When they see a label, they ought to know that after that can is opened, that label reflects the truth with reference to what is inside.

Mr. FRIZZELL. How about these cans that say "serves eight," or these packages that say have eight servings, and then they reduce the weight and they still say eight servings and reduce the weight again and still say they have eight servings?

Mr. GATHINGS. Do you have a growing boy at your house? He will require two servings. That is a 21-year-old boy. He is a man now. But it depends on who is going to be served.

Mr. FRIZZELL. If they have eight midgets, they will have eight servings. When they reduce the size, if they still say eight servings there is something wrong.

Mr. GATHINGS. They might have on a package of grits that if you put a half cup of grits in two cups of water, and stir it, that would serve two to three people, but it would only serve me, because half a cup is just about enough for me. I would eat enough grits for two.

Mr. SPRINGER. I am glad to hear the gentleman's statement for two or three reasons. You have gone into it from an examination of the products you use and you find that there is no deception. Now, there are two or three things that bothered me in this. I assume you could go out in any profession and find some people who were unethical. There isn't any denial that those people can be prosecuted under present law.

The Chairman of the Federal Trade Commission sat in the very position that you are and said that repeatedly to this committee, that he could prosecute anybody who was engaging in deceptive practices.

There isn't any question that can be done under Federal law.

Now, our distinguished chairman said here a minute ago, even though violations are few, you still need policemen. The Federal Trade Commission has enforcement powers and this is the thing that bothers me. You have a policeman and he isn't doing anything about it at the present time. He does have this excuse and I think it is well founded, that he doesn't have enough staff. If he had enough staff he could follow through. The present law is there, and he can prosecute violators. But this isn't what they want to do in this bill. They want to bring every business in under this thing, and set up standards because there may be 1 percent of these people violating the present law, and who aren't being prosecuted under present law. This is the propaganda aspect that disturbs me. You already have a law and the cop sits there and says, "I have the authority, there is no question about it." Yet he does not enforce it because he says he does not have enough hands to get the job done. This is the part that disturbs me. Yet they want to have the other 99 percent all regulated because of that 1 percent that the cop who is on the job hasn't prosecuted.

That is in essence the true situation as it exists. I did not know whether you knew that or not. There is plenty of law already on the books.

But let us come to the second point.

Mr. GATHINGS. I haven't gone into that phase of it. I am grateful that you have so well brought that point out.

**Mr. SPRINGER.** You have a law already to do the job and they aren't enforcing the law. If they enforced the law they would pick up all of these people engaged in deceptive practice. But this wants to go way beyond that, and in fact you already have a law, but you standardize everybody else because there is 1 percent of the people who are violating.

Now, you talk about the package not being full. Well, there are several things here. My distinguished colleague on my left here told me that he knew of a standing offer for a person to make a fortune if they could solve that one. If you put one thing in a box and it is riding for 200 or 300 miles, and if they found that would stay full he could make a fortune. It simply is not possible.

There is another thing that goes into this, which my distinguished chairman talks about. That was that there were at least two or three brands of crackers that are in the same size box, but one is 17 cents and one is 15 cents and one is 12 cents, and there are just 12 cents, and 15 cents and 17 cents worth of crackers in each one of them. But they are using the same size box because it is the cheapest way they can market it without coming up with two more packages, which increases the cost of marketing the product.

Now, all of these things don't get out on top of the table and I want to make sure my distinguished colleague who takes a position understands that there is something to back up what he is talking about.

A great number of these packages are honest, and they are done right. But the fundamental question, is, Shall we set up a standardization for the entire industry of packaging and labeling because 1 percent of them, as my distinguished chairman has said, violate the law? This is the question which you have involved.

Now, I have been raising a question which I think the gentleman ought to know about which he hasn't raised.

Here is a gentleman who writes from the west coast that "A standardization program in both of these bills would mean in our company alone \* \* \*" and I never heard of this company and it isn't a very big one—"engraving and plating changes which would cost in excess of \$560,000."

This is just one company, and this isn't any chain company. This is one company out in Mr. Younger's district. He would pass this on to the dealers who have no alternative but to pass it on to the consumer.

If there are some offenders in the packaging field, it seems wrong to change the whole industry to correct these few when the cost of such changes is passed on to innocent consumers whom you are trying to protect.

Now, this is half a million dollars for some little industry out on the west coast, to change this whole thing.

I haven't made up my mind on this legislation, and I am trying to keep it open to hear all of this, but I am glad to see that someone in this Congress at least has gone out and made a survey of their own and come in here with an opinion.

**Mr. GATHINGS.** I get enjoyment out of shopping because I like to spend money, anyhow. But you will find so many times that a can will be a little too full and when it is opened you will spill an awful lot out of it. You can fill it a little too full, and they want to consider that as well, when it is packaged.

Mr. SPRINGER. I thank the gentleman for a very delightful statement.

The CHAIRMAN. I just want to tell the gentleman that he is not the only Congressman who shops. I want you to know that.

Are there any other questions?

Mr. YOUNGER. Thank you, Mr. Chairman. As you know, we are very well acquainted and I have known of your very many sides, but this is the first time that I have known you as a weekly shopper. I think that you have added materially to the testimony here.

What bothers me in this legislation is that we are only trying to reach in this bill a few things. Fundamentally, in this bill we are creating a new department in the Government which is going to have vast powers and supervise all of the industry.

Now, we are getting into some economic troubles already. We have knocked the building industries in the country over the head, and the automobile business is way down.

Through this, rather than making amendments to existing laws, we are trying to create another department to probably supervise and knock in the head the general industry of foods and pharmaceuticals business. If we keep on in this kind of a process, your food and drugs are not only going to be more expensive, but we are going to come into a situation pretty soon where we will have a depression on our hands, if we keep meddling with economic situation.

I think that there are certain correctives which we have talked of with both the Chairman of the Federal Trade Commission, and the Food and Drug representatives. They want some additional power; namely, to proceed against an entire industry if it is an industrywide difficulty, and they want to proceed not only under the deception but where there is a confused situation and they feel that they cannot meet that.

I am perfectly willing to give them that power. But I cannot see the necessity, myself, as yet, and I haven't seen the testimony that necessitates it, to create another department to ride herd on our manufacturers.

Mr. GATHINGS. I want to say to the gentleman from California that when I was a kid we had in our little store a small soda fountain. In that soda fountain we got some Welch's grape juice to serve and that was many years ago. That grape juice today is identical in flavor. That Welch's juice is the finest product; it has a flavor all its own. Welch's means a lot to me—as do Campbell and Del Monte—these brands are good foods. These people stand behind them. Their whole future depends on the acceptance of their particular merchandise by the consuming public.

Mr. YOUNGER. I want to thank you very much and I am glad to know that you, rather than play golf or do something else, take your weekly exercise in the market.

Mr. GATHINGS. I really do enjoy it.

Mr. KORNEGAY. I would like to join my colleagues in welcoming our distinguished colleague and friend before the committee, and thank him sincerely for his interest in this legislation. I commend him for making this survey or tour of the stores he has made in connection with trying to find out what the situation really is.

I had known for some time that you were a connoisseur of fine foods, but I did not know also that you were an expert in shopping. We have heard a lot of talk here about the best buy and that sort of thing. Of course, it all gets down to a question of how to save money.

Time is money, and the thought occurred to me that if we are going into this area of standardization of these various products, maybe we also ought to give consideration to standardizing the location in these supermarkets of various things, because I am rather an infrequent shopper, and I spend more time trying to find what I am looking for than I do in trying to make up my mind after I find it, as to what is the best buy.

Now, my shopping is usually on Saturday afternoon, or times like that, and my time, I guess, is of relatively little value, but still it is of some value. In walking up and down massive aisles and looking for the soup and the corn flakes and whatever I am hunting, I spend more time really there than I do in getting what is the best buy.

Mr. GATHINGS. It is very difficult, there is no doubt about it, to find certain items in these stores. But I think that they do it for a purpose, Mr. Kornegay. I think that many women, and they are the ones who do the largest part of the shopping, like a change. They will even move a refrigeration department over on the other side of the store sometimes just to satisfy the whims of their public.

Mr. KORNEGAY. These stores will go out of their way to help the consumer. They will cash your check, they will sell you the identical package of merchandise for the same money and give you stamps, too, trading stamps, that is, in Virginia. It doesn't work in the District of Columbia, but they do in Virginia.

My point has been made somewhat facetiously, but what I am trying to do is to examine under a microscope exactly how you are going to save money. It is a very difficult decision to make and I wanted to point that out. That is another element in the whole thing.

I want to thank you, Mr. Gathings, for your testimony and your interest in coming here.

Mr. GATHINGS. I have found that in the packaging of frozen food, they have come up with an idea now of packaging these foods in large plastic bags for the big family. You get quite a good buy when you buy a large bag of frozen peas or frozen beans, or such foods. That is to take care of the needs of a large family and they give you a very good markoff on that particular piece of merchandise, as against a regular-sized package.

Mr. KORNEGAY. That was a point that I tried to make in the hearings the week before last. I live in Washington by myself at times, and when I go to the store I usually buy small cans of peas, and I know I am going to pay more for the peas than I would if I bought the family size which my wife does at home. But at the same time if I bought the family size and there is only one to eat out of it, the rest would go to waste. So in the end it would really cost me more for peas than I do if I buy the little can of peas. These are the difficulties that you are confronted with. We, as the legislators, are trying to get what is really the best buy, and in the final analysis I don't know but what, as you pointed out, it might be better for the individual to get that for himself because it is awful hard for me to get it for him.

Thank you very much.

Mr. GATHINGS. And the housewife is pretty smart.

Mr. NELSEN. Thank you, and I wish to compliment my colleague for his usual sincere and able presentation. It is a sensible one, I might add.

I would like to refer to a statement made on the floor—I am sure you were there when it was made—by Judge Smith, referring to a session of Congress, when he said that we are passing attractive labels in this Congress. As nearly as I can determine in the hearing thus far, the greatest violation in truth packaging is how this bill has been presented in my judgment with an attractive label, and actually the truth of the matter is that most of the arguments used in the sale of this bill can be taken care of in present law.

I am sure you would agree, after hearing the testimony.

Now, mention has been made, for example, of servings, and in the hearings it was made crystal clear that the Food and Drug Administration have the right to say how much solid oyster must be in a can of a number of servings. The courts have held that they have that right and the authority now under the law. For example, as to a can of peaches that was used as an example by the proponents, and by the administration representatives, it was admitted and it was proven that the authority was already in the hands of the Food and Drug Administration in the event there was too much liquid in the can and not enough solids.

Yet nothing was done by even the people who are complaining now and are asking for this bill.

In this instance of the canning industry, as to a can of peas, the standards have been developed. This can of peas is poured out, the liquid goes out, and the peas are poured back in the can. The can is then full. That is now an accepted standard, as far as fill is concerned.

As to some of the packages, for example, of cereal, if the package is completely filled, they tell me that they couldn't close the package without crushing the contents and that settles in the package, so there must be some space in there.

The thing that I merely want to point out is that I am sure that we have adequate laws at the present time.

Mr. GATHINGS. Thank you, Mr. Nelsen.

Mr. PICKLE. Mr. Chairman, I simply want to welcome the distinguished and colorful Arkansas traveler to our committee. He is an expert in this field, and we are happy to have him here.

Mr. GATHINGS. I enjoyed being in Texas, as your guest.

Mr. BROYHILL. I want to join my colleagues in complimenting Mr. Gathings on his statement.

Mr. SATTERFIELD. I have no questions, Mr. Chairman.

The CHAIRMAN. Doctor Carter.

Dr. CARTER. I just want to welcome the genial gentleman from Arkansas, and he is certainly one of the most distinguished colleagues in the House.

Mr. GATHINGS. Thank you very much. It has been a pleasure being before your committee today.

Mr. ADAMS. Mr. Chairman, I just want to thank him for the courtesy to me yesterday and I am glad you are here.



The CHAIRMAN. Our next witness is Mr. William P. Murphy, president of the Campbell Soup Co., Camden, N.J.

Mr. YOUNGER. May I say a word of welcome to Mr. Murphy because they have a very large mushroom plant in my district and we appreciate very much what you have done for the district, and what the district has done in producing good mushrooms for your plant in Sacramento, in making soup.

We welcome you.

Mr. NELSEN. May I likewise welcome the gentleman? They have a plant in our district which has been mushrooming very fast, and we appreciate it.

Mr. SPRINGER. May I say I don't have anything of Campbell's in my district at all, and the only thing I enjoy is a nice soup that I have on Sunday evening at a very moderate price. Thank you.

The CHAIRMAN. Mr. Murphy, I too, can say that I don't have anything in my district and we would welcome one of your plants in the second district of West Virginia.

We are very happy to have you with us as one of the outstanding food manufacturers in America, and to have the benefit of your views. I would daresay that your organization comes under no scrutiny from this committee or from the different departments. We are glad to have you though, here, to give us the benefit of your views on this legislation.

You may proceed.

#### STATEMENT OF WILLIAM P. MURPHY, PRESIDENT OF THE CAMPBELL SOUP CO., CAMDEN, N.J.

Mr. MURPHY. Thank you very much. I appreciate the opportunity to be here. I appreciate the nice remarks from Mr. Younger, and Mr. Springer, and Mr. Nelsen. We try to behave ourselves, as you well know.

We have been in business 97 years. For the last 33 years my primary concern of my business life and great interest has been the marketing and consumer attitudes relating to foods. I have a statement which has been submitted and I am not going to read it. I am going to excerpt it. There are certain parts which I did want to read and certain examples.

I am not going to deal with servings and I am not going to deal with "cents off." I am going to deal with some really vital things that get at the guts of our business.

One is the fact that we have to publish our private formulas so that anybody can copy them. This is provided in the proposed bill—the fact that we cannot innovate without at the same time telling our competitors what we are doing, and therefore, giving up all competitive advantage through initiative, ingenuity, and innovation.

These are the really serious things, and I want to show examples of how this will work.

I am also going to give you an example of something that we have in the works now and I am going to give this even though our competitors thereby will know about it. To emphasize the great importance of this bill and the great harm I think it will do to our business.

There is no question that the housewife is entitled to full and undeceptive information about the product she buys. I don't think anybody argues about that. But equally important, she is entitled to make her own decision whether a particular product or packages are suited to her needs or not.

Let me tell you, if you want to see confusion, you watch a housewife in front of a Campbell soup section of 33 kinds of soup trying to make up her mind whether she is going to buy vegetable or vegetable beef, chicken gumbo or chicken noodle. This is what I call confusion.

The housewife is a very intelligent individual. We don't have to worry much about her being deceived, but she won't be a second time. This is the way to the business grave, to attempt deception. There have been attempts to deceive and the graveyard in the corporate food field is full of companies that tried to do this. It is a very tiny percentage. Some statement has been made about 1 percent. I put it at one-tenth of a percent.

I think it is a minimum. I agree that the Federal Trade Commission, if they just would do their job, could knock this in the head so fast it would make your eyes water.

These bills would take the decisions about buying out of the hands of the individual consumers and put them in the hands of the Federal administrators. This is not a bill for consumers. It will seriously hamper innovation designed to please consumers, and I want to give some examples.

I believe consumers would be deprived of the many new and desirable products that might otherwise be available to them, and she will have to pay more for those she would be able to buy.

This is so because control of packaging size, weight, and shape would stifle innovation. Let me give you just a few examples from our own business.

Consumers have found frozen prepared dinners useful and convenient. The business is in the hundreds of millions of dollars. We manufacture 25 different varieties of frozen dinners, sold under the Swanson TV brand trademark. This product is relatively new. At the time Swanson Co. entered this field in the early 1950's, with a now well-known three-compartment dinner tray. From this beginning, the present substantial industry developed. If Federal control of packaged size, of the weights and shapes, had been in effect then, it is entirely conceivable that the Swanson Co. would not have been willing to risk an investment in this new field. They got a terrific headstart on their competition, incidentally. Let us suppose for example that there had been a regulation saying that frozen poultry parts could be sold only in three package sizes—8 ounces, 12 ounces, and 1 pound. Eight ounces of poultry would have been too much for an individual dinner, so the only alternative would have been for the Swanson Co. to go to Washington for administrative approval.

By the time the problem had been discussed with a number of administrative officials and a new or amended regulation had been published in the Federal Register and made the subject of hearings, potential competitors all would have been fully informed and Swanson would not have derived the advantage of its innovation. So there would not have been much incentive to innovate and so a small company

like Swanson would not risk the investment that would have been required.

Similarly, it would have been difficult if not impossible for us. We acquired the Swanson Co. in early 1954, and introduced the innovations that have helped so materially in expanding this frozen dinner market from 3 dinners to 25.

For example, here is a three-course dinner we brought out 4 years ago. It not only has the basic dinner, but has the initial ingredient of a soup and a dessert.

Here is another one. Two years ago, to get a competitive advantage, we brought out this four-compartment dinner, an improvement on this one. Included in this section is cranberry sauce for the turkey dinner, a blueberry muffin, a brownie, and a pudding—an additional consumer value.

This obviously would require variation in the weight of the individual ingredients and the total weight of the dinner. If these proposed bills had then been law, and regulations controlling size, shape or weight were in effect, neither of these could have been done without the blessing of the Federal Government, thereby giving our competitors full advance notice.

If you don't think that hampers innovation, I will assure you, based on 33 years of experience in the food business, that it would.

Now, here is another example of a new product. There is a little product called Goldfish. This a Pepperidge Farms Goldfish. That is a division of our company. This package contains 250 tiny crackers. It says that all of the way around. Suppose there had been a regulation saying crackers could be sold only in boxes of a particular shape, containing only 4, 8 or 16 ounces of crackers, for example. You know that this package weighs 6 ounces. It would not have been possible to develop this original attractive package. To have made it 8 ounces we would have made the price less attractive. This is 39 cents. Eight ounces would have been 44 or 45 cents which is less attractive. If we had it in a box, instead of this attractive package showing the goldfish, I would say it would have had a far less chance of being successful.

At the very least we would have had to go to Washington to get an amendment, thereby advising all of our competitors what we had in mind and even then we could not be sure we would get the necessary amendment.

Now, what about soups? I guess this is the largest single selling item in the stores, if you took all Campbell soups together. What about these? This regulation is pretty important to soups. You say it doesn't affect soups? These are already standardized, and they are 10 fluid ounces, even though they say all kinds of different weights because of the avoirdupois requirement, which I abhor. But let us say that we were not in the soup business, and let us say that regulatory officials had exercised discretionary authority and concluded that canned condensed soups should be sold only in 12- and 18-ounce sizes. We would have to have six different can sizes, like these can I have here, running from this height to that height, in order to meet a regulation because of the various specific gravities. I don't think it quite is.

I want to give you one real basic reason and real basic fault with this legislation. I will tell you that we are trying now to develop a triple condensed soup.

This is the first time this has ever been disclosed outside of our company, triple condensed. This is a double condensed soup. Each additional can of water makes 20 fluid ounces of soup or a can of milk added to tomato soup makes 20 ounces of cream and tomato.

There are certain soups which we feel we may be able to develop in triple condensed form, which will be a tremendous saving in container, in label, in freight, all the way through, the container.

Can we do this? Can we do this? If this law passes? Without the Federal Government first clearing it, no, we cannot. I guarantee you this bill says we cannot do it and I would say that this changes America. This changes America. This means that Campbell Soup Co. cannot make important new products of great consumer advantage because of a piece of legislation that is shortsighted.

I will give you another example.

What do we want to bring out? Because of the changes in consumer markets, and consumer markets change, there are a lot more single people. This 10-ounce can makes 20 ounces of soup. This is too much for one except a growing kid.

I have eaten 20 ounces at times. Some people serve two people, some people serve three, some four. We don't care about the serving thing. The housewife knows how many servings she can get out of a can. But there are a lot of people living alone. What do we want to bring out?

An individual serving, what we will call an individual serving, let us say a 5-ounce condensed soup; under this regulation we will have to come down to Washington and get down on our knees and beg the Federal authorities to give us permission to do it.

Now these are the fundamental faults, the disclosure of private formula information, inability to innovate. These are the two points that to us just gut our company.

Now, I have some other things here, Mr. Chairman. We have other examples, but I think I have said enough, Mr. Chairman.

The CHAIRMAN. Mr. Friedel, do you have any questions?

Mr. FRIEDEL. Yes.

Mr. MURPHY, are those six cans you have there all uniform size?

Mr. MURPHY. No. They are uniform in their avoirdupois weights. For example, bean and bacon soup has a greater specific gravity.

Say we had a 12 ounce. The net weight had been set up for soups. This is 12 ounces of oyster, too. This is 12 ounces of bean and bacon.

Mr. FRIEDEL. They all have different sizes.

Mr. MURPHY. I don't think this is our principal point I am making here, Mr. Friedel.

Mr. FRIEDEL. I thought you wanted to keep the uniform size.

Mr. MURPHY. We want uniform size, yes.

Mr. FRIEDEL. And give the specific weight on each package?

Mr. MURPHY. Yes. Well, I would love to have the Government say go to fluid ounces, because these are all 10-fluid-ounce cans.

Mr. FRIEDEL. They are 10-ounce cans?

Mr. MURPHY. All of our soups in this size can that are now on the shelf are either 10 fluid ounces, or 20 fluid ounces, or 46 fluid ounces,

or for the vending machines where it is ready to serve, not condensed, 8 fluid ounces, although it says here  $8\frac{1}{4}$ , which is avoirdupois, because the Government requires us to say avoirdupois.

It would be a lot less confusing to the housewife if we would go to fluid ounces instead of avoirdupois ounces. A lot of this quarter, half, three-quarter-ounce thing, is the fact that we are still on the antiquated avoirdupois-ounce basis for products that are really in fluid-ounce containers.

Mr. FRIEDEL. Each package has marked on how many fluid ounces?

Mr. MURPHY. How many avoirdupois ounces, the weight.

Mr. FRIEDEL. The weight?

Mr. MURPHY. Not the physical contents. Fluid ounce is physical contents. Avoirdupois ounces is weight. We also put on the number of grams. In Canada of course everything is 10 fluid ounces, just as it is in England, as it is in Australia, as it is in Mexico, but here under our regulations we have to use the antiquated and avoirdupois ounce setup, which we would like to get rid of, incidentally, but that is aside from the point.

Mr. FRIEDEL. Mr. Chairman, I will reserve any further questions for later.

The CHAIRMAN. I would like to ask, Mr. Murphy, if this bill, for instance, were amended to eliminate the provision to standardize weights and quantities and to substitute two prohibitions, first, against nonfunctional slack fill; second, against packages which appear to be the same as before, but actually contain less, would you still object to the bill?

Mr. MURPHY. Our objections to this bill are to section 5 (d), (e), (f), and (g), and the section which discloses the formula information.

The CHAIRMAN. Just answer this question.

If this were amended in this fashion would you still object?

Mr. MURPHY. Cents off, so what? We don't use them; very occasionally. Actually as to the history of the cents off, the grocery business is full of so-called deals. You know what I mean. For a limited period of time the direct customer, the wholesaler, or the chain warehouse, will be 25 cents a case off for a limited period for a specialty.

So many times that 25 cents never got to the consumer. It never changed the retail price because there is a wholesaler or chain warehouse between the manufacturer and the retailer and so often that didn't get through, and so there were two things done in order to try to get those special sales, what they call deals, special sales, through to the consumer.

One was coupon. Now, there is a lot of fault in coupon. There is faulty redemption. "Come into our store. We will give you cash for it. We will sell you anything on this 10-cent coupon." It is like an infectious disease.

It becomes big in a certain place. It became big in Omaha, you may remember, Mr. Cunningham, until the trade just kicked it out. It is now pretty big in northern New Jersey and certain part of New York City.

The other thing was the cents off, and there the manufacturer was relying on the retailer actually reducing the price and in our opinion in the main he did it. I think a higher percentage of the deal price

reduction reaches the consumer via the cents off than it does via the regular deal. So I don't consider this cents off thing critical.

I think we are not doing the consumer a big favor by knocking it out. I think we ought to prosecute fraudulent cases of it. I know it has been heralded, made a great big thing of, but I would hate to have this bill hang on the cents-off thing or the servings thing.

The servings thing can go out the window as far as I am concerned. The housewife decides what she is going to do in the way of serving.

The CHAIRMAN. Again I would like to ask if this bill were amended to eliminate those provisions that we talked about, to standardize weights and quantities and substitute these two prohibitions, first against nonfunctional slack fill; the second against packages which appear to be the same as before but actually contain less, would you still object to the bill?

Mr. MURPHY. Did you put in the exact way the formulation is, the exact weight of ingredients?

The CHAIRMAN. Amend the bill to eliminate the provisions to standardize weights and quantities. I think that is what you are objecting to, Mr. Murphy.

Mr. MURPHY. There is section 5(c)(4) which requires a manufacturer to disclose his formula. I mean it could require a manufacturer to disclose the exact quantity of each of the ingredients going into a can of vegetable soup and so anybody could copy our formula.

The CHAIRMAN. Do you have any language to substitute in place of this?

Mr. MURPHY. Yes, we do. We would like to list ingredients in order of size. We now do this on our products; in other words, the principal one, and the second principal one, third one, in order of size.

The CHAIRMAN. I know you do.

Mr. MURPHY. But if you have to put the weight on it you are disclosing your formula.

The CHAIRMAN. The reason I am asking you this is I believe that America as a whole is demanding some kind of a bill, if I read the sentiment correctly in this country, and I don't believe the intent of this committee is to hurt industry in any way, and especially organizations such as yours which is doing a good job.

I think nearly every member of this committee feels the same way, but I think that you in all fairness will agree there are some things going on that need attention, and that is what we are trying to get at.

Mr. MURPHY. I appreciate that, Mr. Chairman, and you know what our principal points are that we are concerned with.

The CHAIRMAN. Yes.

Mr. MURPHY. I do have language if you would like to substitute it for this formulation thing. We feel so deeply on this.

The CHAIRMAN. We would like to have it if you will submit it to the committee.

Mr. MURPHY. We will submit it.

(The information referred to above follows:)

Insert the following proposed amendments to Section 5(c) and Section 5(c)(4), which should be inserted in place of the existing provisions contained on Page 5, Line 24 through Page 6, Line 5, and Page 7, Lines 4 through 10, of H.R. 15440:

"Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are

necessary to prevent the deception of consumers [or to facilitate price comparisons] as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

“require [consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended] that [information with respect to the] *a list of the principal ingredients* [and composition of any consumer commodity (other than information concerning proprietary trade secrets)] be placed upon packages containing that commodity [; and], except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.”

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Would you read that?

Mr. MURPHY. Section 5(4), on page 7:

require that a list of ingredients of any consumer commodity be placed upon packages containing that commodity, except (a) each such regulation shall be consistent with the requirements imposed by or pursuant to the Food, Drug, and Cosmetic Act, as amended, and (b) no such regulation shall apply to any consumer commodity for which a definition or standard evidently has been established and is in effect pursuant to regulation promulgated under this act, and (c) that no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.

Mr. SPRINGER. In essence what you are asking is that it is all right to put in the formula, we will say, on the label, the mushrooms, flour, salicylic acid, and salt, whatever else goes into it, but not the quantity which would disclose your secret?

Mr. MURPHY. That is right.

Mr. SPRINGER. That is the first one. The third one I got, but I didn't get the second one. The third one I got.

Mr. MURPHY (reading):

no such regulation promulgated under this paragraph may require the disclosure of information concerning the proprietary trade secrets.

Mr. SPRINGER. That is the third one. There were three there. What is the other one? There are three things.

Mr. MURPHY. This bill does not cover meat products.

Mr. SPRINGER. I understand.

Mr. MURPHY. Or poultry products.

Mr. SPRINGER. But there were three things in that and I got two of them and I haven't got the third one. That is the one I didn't understand.

Mr. MURPHY. And (a) is that “except that each such regulation shall be consistent with the requirements” under the present law. And (b) is that “no such regulation shall apply to any consumer commodity for which a definition or standard evidently has been established.” This is a legal language.

Mr. SPRINGER. All right.

That is all, just those two things then?

Mr. MURPHY. Actually the weight, the amount of the ingredients. Here is tomato soup. It shows “Prepared from tomatoes, enriched wheat flour, vegetable oil, onions, butter, salt, sugar, natural seasonings, and vitamin C.”

We don't want to put in the exact weight of the butter, salt, sugar, exact seasonings or their exact weight.

Mr. SPRINGER. That is your formula?

Mr. MURPHY. That is our formula.

Mr. SPRINGER. I understand.

Mr. MURPHY. Under this present bill as written we could be required to publish it.

Mr. SPRINGER. Mr. President, I have been very much interested and I am trying to get out of each witness, because we are getting gradually a representative viewpoint, pretty broad, across the country, your dollar sales, under a million and in years, say.

Mr. MURPHY. Our what? Our sales?

Mr. SPRINGER. Yes.

Mr. MURPHY. We just finished our fiscal year July 31 and I think we are around \$767 million or \$770 million.

Mr. SPRINGER. You are between a half billion and a billion dollars?

Mr. MURPHY. Yes.

Mr. SPRINGER. You probably have some idea that this legislation is pretty imminent. You have made some loss figures, haven't you, on what this would cost?

Mr. MURPHY. Yes, sir, I have a lot of cost figures, but I am afraid to use them. Let me tell you why.

Mr. SPRINGER. All right.

Now, wait just a second. This is one of the important things that we want to know because this I have been raising with every single witness. We had a lot of people down here from the White House, the Trade Commission, all of whom are big propagandists for some kind of a consumer bill, and all they want is a consumer bill on the front of them.

I know what they are down here for, but the point I am trying to find out is when I asked each and every one of them if they had any idea what this was going to cost the country they hadn't even thought of it.

They hadn't even thought of the cost, let alone come up with any estimate or tried to see anybody in industry to ask them what this is going to cost, and I am asking you what it is going to cost you.

Mr. MURPHY. If we had a change in package size on a can of soup it would cost us a half million dollars a line and we have about 70 lines.

Mr. SPRINGER. Then you are talking about each time you would change it, if you change all your lines, it would be \$35 million.

Mr. MURPHY. \$35 million, yes, sir.

Mr. SPRINGER. You are going to absorb that yourself?

Mr. MURPHY. This is a minor cost.

Mr. SPRINGER. Is \$35 million a minor cost?

Mr. MURPHY. Yes. Let me tell you the big cost. Supposing we bring out a triple condensed soup. What do you think that that would do to our business? It might give it a great big lift. Our business has been growing at a regular rate. It might give a great big lift to our business. It might represent a great big economy to the consumer.



And if some Federal administrator says, "No, you can't do that, can't do that," what is the cost of that? I think the cost of that would make the \$35 million look small.

Mr. SPRINGER. Let us just pin this down a little bit more. He wouldn't have to tell you you can't do it. All he would have to do is tell you to put it in this size can.

Mr. MURPHY. And maybe that would be a can of a size that wouldn't sell.

Mr. SPRINGER. Couldn't market it at all.

Mr. MURPHY. Couldn't market it at all.

Mr. SPRINGER. When you get ready to market a new product it is my understanding from some of these witnesses that have come before us that they make pretty much of a test of this. They really go into the marketplace to find out when they have a revolutionary product just as we had one here.

I can't remember what it was. It was brand new. But they found out that it could only come in half a pound. They couldn't market it any other way but half a pound can. In fact the marketing was as big as the product was as far as sales were concerned.

Do you make a pretest in the marketplace to determine what you are going to sell?

Mr. MURPHY. Yes, sir. Our record is about 90 percent success on new products and we go through a complete series of tests in the home, in a few homes, in several hundred homes, then in several cities, and then in a region before we go out for whole.

We want to please the consumer. We have to. She has to want that product or we are licked.

Mr. SPRINGER. Let us just take \$35 million and divide it among 70. That would be 5 percent the way I get it. That would be 5 percent of your total sales, wouldn't it, if you had to revolutionize the whole 70 cans? Isn't that correct? That isn't any insignificant cost.

Mr. MURPHY. I have indicated the cost per line which we know it would take for the change. I think it would be much more costly than that because I think it would hurt our total volume of sales and the cost would be very much greater than that.

Mr. SPRINGER. Do you absorb this?

Mr. MURPHY. What is that?

Mr. SPRINGER. Do you absorb this kind of cost?

Mr. MURPHY. Well, I don't think you can. I think you have to pass it on.

Mr. SPRINGER. This raises a point. I said to you a minute ago I enjoy Campbell soup on Sunday evening because it is soup at a modest price, but I certainly don't want it increased 2 or 3 or 4 cents by this legislation.

Mr. MURPHY. Neither do we.

Mr. SPRINGER. Do you have any answer to that?

Mr. MURPHY. Neither do we, Mr. Springer.

Mr. SPRINGER. This is a problem I am trying to get out here so this committee can understand if there is going to be increased cost or there isn't.

There have been people here talking about this most innocent woman you have ever seen who is in charge of consumers, who says it won't

cost much to just put a new label on; all you have to do is put a new label on and this gives you the whole picture. She didn't even understand what this legislation was about.

Thank you, Mr. Chairman.

Mr. FRIEDEL (presiding). Mr. Jarman.

Mr. JARMAN. Mr. Murphy, I have a question or two I would like to ask.

Assuming that Campbell Soup should come out with a triple condensed soup, as you mentioned, which would be in a smaller can than the regular size that Campbell now uses, what is there specifically in the bill before us that would prevent Campbell Soup from effectively bringing out the product in the new can?

Mr. MURPHY. The bill provides for establishing standards as to size, shape. If those standards are set and then a manufacturer wants to bring out a new size he must come and get approval for the new size.

Mr. PICKLE. Would the gentleman yield?

Mr. JARMAN. Yes.

Mr. PICKLE. What section of the bill do you make reference to in answer to the question that the gentleman from Oklahoma asked?

Mr. MURPHY. It is section 5(d)—

Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

And so forth.

In other words, there is the power given to a Federal official to stop a new size.

Mr. JARMAN. But under the bill before bringing out triple condensed soup in a smaller new container, you would have to come to Washington first on your own initiative and get the authority?

Mr. MURPHY. Yes. You know how fast news of that flashes to the rest of the trade? It is actually less than 24 hours. I will give you that because we know through our familiarity with the other agencies of Government where we deal with the chicken and poultry products.

Mr. JARMAN. Let me ask you to turn to page 9 of the bill if you will and to subparagraph (3) which provides—

preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers.

Would you comment on whether you think that subsection would give you some protection on your triple condensed product?

Mr. MURPHY. If you have a broadminded administrator, you know, a man with great experience in consumer goods, there is no harm done, but what if you have the opposite kind of a person who decides he wants to run things. He can call it deceptive because it is different.

In other words, we are taking freedom of innovation and substituting for it Federal control. This is why I say we are not doing the consumer any favor here, because, you know, standardization sometimes costs a lot of money.

Diversification has made the modern supermarket the envy of the whole world. I haven't pointed out what this bill would do to us

internationally when our competitors in Japan and France can go their own happy way on our export market and we would be tied down by restrictions.

I haven't pointed that out, but this is another factor, but less important than the others I have tried to bring out.

Mr. JARMAN. I am sure all of us are interested in protecting the right of a great company like Campbell soup to bring out new products for the public.

Mr. MURPHY. We appreciate that, sir.

Mr. JARMAN. I am reminded, though, of what Secretary Connor said in part in his statement to the committee early in these hearings. He said that—

Fears have been expressed that promulgating agencies could be unreasonable in exercising discretionary authority. This is, of course, an argument that could logically be made about every bill. But it should be noted that these regulations cannot arbitrarily be imposed. They must be based on public hearings, and opportunity for judicial review also is provided in the bill.

Let me ask you this. Do you feel that there is presently enough law?

Mr. MURPHY. Enough what?

Mr. JARMAN. Do you feel that presently we have enough law in this field to do the policing necessary if that law were enforced?

Mr. MURPHY. I don't think there is any question about it, sir, and I think that if we had adequate enforcement of existing law, the small amount of deception that might be practiced would be a very, very tiny part of the whole and a pretty small penalty to pay versus the other great penalty on the other side that would come through packaging controls.

Mr. JARMAN. Based on your long experience in this field do you feel that any additional legislation is necessary?

Do you have any recommendations for the committee?

Mr. MURPHY. I have no recommendations, sir. Incidentally, Secretary Connor is a great friend of mine. I was on his Board and I have worked with him in connection with the Business Council and I have great respect for his opinion.

However, he wasn't in the food business, and I have been.

Mr. JARMAN. We are going to be in the process in executive session of considering this bill in detail and I would simply say if you have any suggested language to recommend, for instance, in tightening up the subsection 3 to which we referred a moment ago, it would be very helpful to us.

Mr. MURPHY. We will be glad to submit our recommendations, sir, and I also say that any information you want from our company we will be very happy to provide you.

Mr. ROGERS of Texas (presiding). The gentleman from California, Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman, and thank you, Mr. Murphy, for a very fine presentation.

I have had another case called to my attention that follows along your same line of argument and that was the development of the soft margarine which was put into tubs.

I understand that there were several million dollars invested in that product to bring it to the point where they could market it. If this

bill as it is now written were passed and became a law very few companies are going to risk several million dollars in trying to develop something and then have to disclose their development to the public before they can get a chance to use it. Isn't that true?

Mr. MURPHY. I think that is true. You know, we had a jump on this TV dinner with the three-course dinner. We had about a 9-months jump on our competition on this product and almost a year's jump on our competition on this product.

You don't think that was helpful? It was terrifically helpful. And this is innovation and I think the housewife likes it.

Mr. YOUNGER. But you have to spend a lot of money to develop this before you can put it on the market.

Mr. MURPHY. And we don't want to spend the money and have all our competitors sharing the benefit.

Mr. YOUNGER. That is right. One other question.

Do you think that the meat products ought to be covered?

Mr. MURPHY. They are covered in a way that is perfectly all right with us.

Mr. YOUNGER. I know it, but I mean normally in the bill meat—

Mr. MURPHY. And poultry.

Mr. YOUNGER (continuing). And poultry is not covered.

Mr. MURPHY. No; but, you see, the meat and poultry regulations specify that you must show the ingredients and they also have levels of quantities.

For example, in bone chicken you have to have a certain definition, which is all right. That is fine.

Mr. YOUNGER. That is in law, too, agriculture.

Mr. MURPHY. That is right. This doesn't deter us in any respect.

Mr. YOUNGER. Yes. Do you think this provision should be in here, if they insist on this kind of a law, if the administration insists on it, to set up a new bureau with all of these standards? Do you think that that law should also impose the same standards on any comparable imports from any foreign country?

Mr. MURPHY. Well, I think that it would have to, but what are you going to do in Bermuda where you are competing with the French?

Mr. YOUNGER. There is nothing in the bill at the present time covering that, is there?

Mr. MURPHY. No, but I am thinking of our handicap we have in competing with our foreign competitors in a place where we are restricted here. They are not restricted. This is another element.

Mr. YOUNGER. That is right.

We are then passing along all the advantages not only in the product, but also in our balance of payments, so to speak?

Mr. MURPHY. Would you like to know how fast a Japanese company would make a line of soups identical with ours if this bill were passed as it is? They would be out with it in 6 months and copying our products exactly and swamping the whole export market with them.

They can't do that now because they don't have our formulas. If our formulas were published in accordance with this bill, we would have Japanese competition that would knock our export sales "galley west."

Mr. YOUNGER. It seems to me that if we are going to do anything we ought to proceed along the same lines that we have already set up, namely, in the Federal Trade Commission Act.

Mr. MURPHY. Meat and poultry.

Mr. YOUNGER. And in the Pure Food and Drug Act, with amendments, and not set up a new bureau. Isn't that your feeling?

Mr. MURPHY. That is my feeling.

Mr. YOUNGER. Thank you.

Mr. ROGERS of Texas. Mr. Kornegay?

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

Mr. Murphy, I want to thank you for your testimony and say you certainly have done a splendid job in presenting your viewpoint in this matter and the effects of this legislation on your business and probably on the business of others.

Now, you have been questioned about certain features of this bill being eliminated and the bill ultimately included only two areas. These two would be slack fill and the deception with reference to the sizes, as I understand it. If it appears to be as big as it was before, but actually isn't as big a commodity as it was before, that is, by changing the shape of the container or by some other gimmick, that would leave the impression on the consumer or purchaser that he or she was getting the same quantity but was actually getting less, would it not?

Now, with reference to the first point, the FDA now has authority over slack fills and in fact has established standards of fill for certain commodities such as canned fruits, fruit juices, canned shellfish, canned tuna fish, canned vegetables and canned seafood.

Some of these standards are quite specific, that is to say, the standards of fill. Canned crushed pineapple is a fill of not less than 90 percent of the total capacity of the container. Other standards seem merely to remind you that the FDA expects industry to avoid unnecessary slack fill such as the standard of fill of the container for canned peaches is the maximum product of peaches that can be sealed in the container and heat processed without crushing or breaking.

Is that a fair statement of the present law as you know it?

Mr. MURPHY. As I understand it. I think a manufacturer worries more about slack fill. We have electronic devices so that every item that we make has to get not only a personal visual inspection, but also an automated inspection to make sure. We worry about a slack fill.

Mr. KORNEGAY. The machine kicks out slack fill, is that it?

Mr. MURPHY. Yes, sir. We are worried about that consumer. I don't know any food manufacturer that is crazy enough to deliberately slack fill. He is going to go out of business. I will guarantee it.

Mr. KORNEGAY. Let me ask you this: Do you feel that the present law covers all these problems or could cover them?

Mr. MURPHY. Oh, you know, there was a case of a candy—this was quite a point—I have forgotten the name of the candy, Delsey candy—that was cited as a great example of deception of the consumer.

Mr. KORNEGAY. You say candy?

Mr. MURPHY. The Government alleged that the mints were deceptively packaged because of paper dividers. The company maintained these were desirable to prevent breakage and for appearance. The Government lost the case. The Government had the power and could have issued regulations which would have been entitled to great weight by the court and would have made the Government's task of

proof easier, but for some reason it had not seen fit to issue regulations prior to the lawsuit. I understand the packaging in question was subsequently modified. This mint case has been held up as a reason for this bill. I do not think this is a valid reason because the Government could have issued regulations but didn't.

Mr. KORNEGAY. Maybe some others might come to light during the committee's deliberation on this problem and at the end of the hearings the proponents made out a case where it appeared to be necessary in order to protect the public that some action had to be taken in this total area.

Do you feel that we ought to pass out a bill such as we have under consideration as setting up a new department to handle it, or should it be done by way of amendment to the existing law?

Mr. MURPHY. I would amend the existing law, sir. This is gratuitous. You are asking the question. That would be my suggestion.

Mr. KORNEGAY. Thank you very much.

Mr. ROGERS of Texas. Mr. Devine.

Mr. DEVINE. Mr. Murphy, I have no questions. I just want to comment to you it is refreshing to see a member of the free enterprise system here very enthusiastic about the products of his company and having pride in what you are doing and you have gotten that through the great free enterprise system, not through Government regulations and control.

That is the only comment I have to make.

Mr. MURPHY. Thank you.

Mr. ROGERS of Texas. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Murphy, I don't think that it was the intent of the Federal Trade Commission and HEW, and the Food and Drug Administration to require that you show on your packages, cans, products, any private formula that your company has, and I don't think it was the intent of any of those groups to require that you be limited in any innovation.

Now, those seem to be the main two complaints that you have registered about this bill. I assume with respect to sections 3 and 4 that in general you think there are advantages to be gained and that they are not critical to the packaging industry, and that as such in general terms they would be acceptable.

Now, I want you to tell me just to be sure I understand it myself again. What place in this bill clearly says that you would have to give away your trade secrets?

Mr. MURPHY. That is page 7.

Mr. PICKLE. You are talking about 5(d) ?

Mr. MURPHY. I am talking about 5(c) (4).

Mr. PICKLE. Now look then in that same section. On line 8 it says clearly "(other than information concerning proprietary trade secrets)."

Mr. MURPHY. What is a proprietary trade secret?

Mr. PICKLE. I would read the intent of that is to say that you don't have to publish your formula.

Mr. MURPHY. What is a proprietary trade secret, sir?

Mr. PICKLE. Let us get back to what you think would be the intent of the legislation. I think we can talk a long time about what would be a definition of proprietary secret.

Mr. MURPHY. As long as the present Secretary of HEW and the present Secretary of Commerce or sensible officials, but this is subject to Government discretion.

Mr. PICKLE. If the language were changed or made clear that you would not have to give away any trade secrets——

Mr. MURPHY. Why not use the language of the present regulations on meat and poultry?

Mr. PICKLE. Well, rather than going back to present language, either present language or any new language, if it is made clear that you didn't have to give away your trade secrets then this would go to the heart of that one complaint, is that correct?

Mr. MURPHY. If you just say list of ingredients in descending order and not require weights.

Mr. PICKLE. That section doesn't make any reference to weights.

Mr. MURPHY. Oh, yes, sir, it does. I beg your pardon, sir. If I am a real busybody Government regulator I can say, "Buddy, you have to put down the amount of salt."

Mr. PICKLE. I just don't see the word "weight" in section 4. You point it out to me.

Mr. MURPHY. But it says "with respect to the ingredients and composition," composition, the word "composition." See that word? That word means weight. It could mean a lot more. It could mean the nature. It could mean the actual, specific nature of a certain ingredient.

Mr. PICKLE. All I am trying to get at, Mr. Murphy——

Mr. MURPHY. Yes, I know.

Mr. PICKLE (continuing). Is that you would want the language made clear that you would not have to give away as a packager of food any kind of a trade secret?

Mr. MURPHY. Any kind of weight information. I am that specific, sir, because I was in the Government, you know, for over 3 years during the war when we had a War Labor Board and we had a Price Administration and believe me I ran into some pretty arbitrary decisions.

Mr. PICKLE. If you object to any kind of mention of weight, would the same thing apply for, say, percentage?

Mr. MURPHY. Yes. If you have 10 ounces and you give percentage——

Mr. PICKLE. Let us use an example in the case of salad oil. Do you think that the consumer is entitled to know what percentage is olive oil and what percentage is cottonseed oil?

Mr. MURPHY. Why not simply declare the olive oil and the vegetable oil in descending order of importance? When there are essential differences in the oils as between olive oil and cottonseed oil, perhaps there is a need to distinguish on the label, but not when the oils themselves are fungible or interchangeable as is true of corn oil, soybean oil, and cottonseed oil. The latter are usually shown on the label merely as "vegetable oil."

Mr. PICKLE. I am not sure but what that might be a rather severe interpretation, but let us go on to another point here.

Where now does it say that you can't innovate, that you don't dare to bring out a new product?

Mr. MURPHY. This is covered, sir, under sections 5 (d), (e), (f), and (g).

This says in effect that, if standards have been set for a commodity and you want to bring out another product, another package, weight, size, shape, you have to come to Washington, get down on your hands and knees, and beg some Government official to approve it.

Mr. PICKLE. You made that statement earlier.

Mr. MURPHY. This is true, sir.

Mr. PICKLE. I think that is a figure of speech. I just don't interpret it that way. I don't think I like the section particularly, but I don't believe that is the intent of the legislation, Mr. Murphy.

Mr. MURPHY. I hope not. You know, this voluntary thing in here is a selling phrase like truth in packaging. This is not voluntary. This has been brought up in these hearings, and I have read all the hearings. Calling this thing voluntary is not the truth. This is not voluntary.

Mr. PICKLE. The authorities have testified, and I am talking about the HEW—

Mr. MURPHY. They are not food authorities. They know nothing about the food business. I raise the question that the Government officials that have testified here know very little bit about the food business. Secretary Connor knows practically nothing about it. The Secretary of Health, Education, and Welfare knows very little about it.

They know about as much as the average consumer. I can tell you what the effect is on a sizable consumer company that is trying to do a good job for consumers and I would say this bill is very harmful to consumers.

Mr. PICKLE. I think I understand your feelings on it and in general I share your concern if you were to have to give away trade secrets, if you were prevented from doing innovation, that this would be wrong, and I don't think the Government intends that and we shouldn't. We should not.

I don't know, though, that I read into it all that you have said, but I have enjoyed visiting with you about it. At least you gave us pointed answers.

Mr. MURPHY. I am delighted, sir, to hear you say that you agree that those two factors are important.

Mr. ROGERS of Texas. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Reference has been made to the intent of the bill and I am sure that you have had some experience, as I have. I have served in our Minnesota Legislature for a number of years, and it frequently happened that a bill that we would pass having a legislative intent, because of power granted to some bureau we would find an abuse of that power, and it is pretty hard to write it exactly right and I am sure that we all must proceed on the theory that our intent must be clear in the bill. Would you not agree to that?

Mr. MURPHY. Exactly; yes, sir.

Mr. NELSEN. Under the terms of the bill we talk about these voluntary guidelines, but the Federal Trade Commission in their statement



said that they wanted to get away from this cumbersome case-by-case approach and wanted an industrywide application, and of course in this case it would be those voluntary guidelines which they would be sitting in judgment over.

On the innovations that you may wish to make, we will say that you do come up with a new package. I don't presume the bill says you must go to Washington for permission for its use, but if you proceed and they in their judgment find out or decide that it is not in keeping with their guidelines, then under the penalty clause in the bill, as I have pursued in other hearings on this bill, under the cease-and-desist legislation you are guilty until you prove you are innocent and you are called into court and you must prepare your case and your own defense, and you are guilty until you have proved they are wrong, which is a pretty tedious and a very expensive process, and in my judgment a dangerous one.

I would like to again bring forth this question about the present laws, as has been stated over and over again, the present laws under Federal Trade and under the Food and Drug.

In your judgment you have stated that they could be amended where there are imperfections to do everything needed in the food business, is that true?

Mr. MURPHY. That is true, sir.

Mr. NELSEN. Thank you. I have no more questions.

Mr. ROGERS of Texas. Mr. Satterfield.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

I believe your statement has been quite clear and to the point, sir, but there are a couple of things that I would like to sort of recap if nothing else.

As I understand it, in packaging your soups for sale, today you use one size can for all soups.

Mr. MURPHY. No. We have this can which is called in the trade the No. 1 can. It is a 10-fluid-ounce can. We have been using that since 1898.

Mr. SATTERFIELD. Is that not the can that you say under this bill you will have to substitute six different sized cans?

Mr. MURPHY. No, no. We were using this as a hypothetical case in case we wanted to go into business. Let us forget that. We use this can. We also have a can double the size which is used in certain very fast selling items and it is twice the size.

We have another can that is used—this is ready to serve—which does not require any water or milk to be added for use in vending machines or in the drugstores.

Mr. SATTERFIELD. I understand that. Let me go back for a minute.

You have six cans over there that will hold the same weight product of different sizes because of the different density or specific gravity of the product?

Mr. MURPHY. Yes.

Mr. SATTERFIELD. As I understand it, those six cans if we went to an even weight for all soups would take the place of the single No. 101 can here?

Mr. MURPHY. That is right.

Mr. SATTERFIELD. In other words, you would require six cans to do the job if you had to package by weight rather than one can if you package by volume; is that correct?

Mr. MURPHY. That is right.

Mr. SATTERFIELD. So actually as far as this No. 101 can is concerned you are really concentrating on putting your product out by volume rather than by weight?

Mr. MURPHY. I would love to see the Government say go to fluid ounces.

Mr. SATTERFIELD. But you are at fluid ounces now, are you not?

Mr. MURPHY. No, we have to use weight ounces.

Mr. SATTERFIELD. I realize you have to print that on the label, but in packaging your product you are packaging it in a can of constant volume, is that correct?

Mr. MURPHY. Yes, sir. Every other country in the world is fluid ounces. Here we use avoirdupois.

Mr. SATTERFIELD. Here you are putting your product out as far as soup is concerned on a volume basis rather than a weight basis?

Mr. MURPHY. Yes;  $10\frac{1}{4}$ ,  $10\frac{1}{2}$ ,  $11\frac{1}{2}$ ,  $11\frac{1}{4}$ .

Mr. SATTERFIELD. As to your "Goldfish" example over there, if I understood you correctly the packaging of your product as you package it now is not set so much based on weight or size of package, as it is on price.

Mr. MURPHY. Well, we worked a lot with consumers in this product. We knew we could sell a lot more at 39 cents than we could at 43 cents and 44 cents, and it came out to exactly 250 "Goldfish." It is little trick of how to get exactly 250 in each package.

Mr. SATTERFIELD. The controlling factor here was not so much weight as it was marketability.

Mr. MURPHY. Marketability, attractiveness to the housewife.

Mr. SATTERFIELD. If this bill does as I think it will do and as apparently you suggest it will do, and, frankly, I think as the proponents of it have practically admitted is the purpose of it—require standardization of weight of products put on the market—then you are going to not only change all the packaging you now have, I think you testified, at least as far as the cans are concerned the additional cost would be somewhere around 5 percent of your gross sales at the present time, and you might suffer some relapse in your salability of products so that your sales might drop as a result, is that true?

Mr. MURPHY. Well, I would like to point this out, sir: That since this is an established size, this bill as now written would permit this size. This would not force us to change this size, but if we came out with a new group of products—

Mr. SATTERFIELD. That may be a standard size, but let me ask you this question. This gets to the voluntary thing you were talking about. This bill says you can't change any voluntary standard now in existence.

Mr. MURPHY. Yes.

Mr. SATTERFIELD. But your standard in existence today is a volume standard, is it not?

Mr. MURPHY. Yes.

Mr. SATTERFIELD. If they standardize and say you have to put this soup up according to avoirdupois weight, even then your standard isn't changed, but you are subject to a new standard?

Mr. MURPHY. In (e) if they say go by weight we go by can sizes.

Mr. SATTERFIELD. To tie down what Mr. Springer was talking about, if the increase in packaging of your cans according to weight would be roughly 5 percent of your gross sales, you have to pass it on. This means at least a 5-percent increase in the product to the consumer, does it not?

Mr. MURPHY. That is a one-shot cost, you see, 1-year cost.

Mr. ROGERS of Texas. Will the gentleman yield?

Mr. SATTERFIELD. Yes, sir; I will yield.

Mr. ROGERS of Texas. Then it would be a violation of the law under those circumstances for you to put that bean and bacon soup in the oyster soup can?

Mr. MURPHY. If the regulation provides it, that is right; yes, sir.

Mr. ROGERS of Texas. Thank you.

Mr. SATTERFIELD. Let me ask you this. You say it would be a one-shot proposition. Would this not require in addition to different size cans a change in your whole—

Mr. MURPHY. Think what it would be to our warehousing customs.

Mr. SATTERFIELD. Not only the warehousing but the machinery in which you package this product.

Mr. MURPHY. On the grocery store shelves.

Mr. SATTERFIELD. In other words, there is going to be a definite increased cost to the consumer if we go to the weight standard rather than a volume standard on soup?

Mr. MURPHY. We are on a weight standard now, sir, but we are able to vary the statement on the can so we can stick with the volume standard.

Mr. SATTERFIELD. Thank you.

Mr. ROGERS of Texas. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Murphy, I want to congratulate you on an extremely fine statement on this very controversial and involved problem.

Going one step further in the matter that was just being discussed, can you reduce to cents what would be the additional cost to the housewife if, for example, your tomato soup would be regulated into a can that was an inch smaller? Would that require a new label as well as a new can?

Mr. MURPHY. Oh, yes; new label, new can, new case.

Mr. CURTIN. That would require an initial cost outlay?

Mr. MURPHY. Yes.

Mr. CURTIN. What would be the increased cost in cents to the housewife for that initial changeover? You speak roughly of 5 percent.

Mr. MURPHY. The increased cost in our own plants would be, let us say, a cent to the consumer by the time it reached the consumer, say 1 cent a can, but what if the consumer didn't like that size can and the volume went down, and then our cost would really shoot up.

Mr. CURTIN. You would be required to expend \$35 million, I believe you said, in making that changeover?

Mr. MURPHY. Yes.

Mr. CURTIN. So that if it develops that the new size can is not marketable, then that is \$35 million down the drain?

Mr. MURPHY. Yes, but let us say your volume went off 20 percent. Just think of the cost of that, what it would do to your selling prices. It would make that 1 cent for the consumer very small.

Mr. CURTIN. Now, as I understand it, before you put a new size can, or new package, or a new product on the market you have had some research developed to try to determine whether or not it is going to be a successful venture; is that correct?

Mr. MURPHY. We put it in a small group of representative homes. Let us say we put in 2 dozen cans or 2 dozen packages and we let them use it. Then we come back after a month and find out what happened and we find things wrong and things right with it, and then we make changes.

Then we will put it in 200, 300 homes and do the same thing and then if everything looks all right we will go into a couple moderate-size cities like Columbus, Ohio, Syracuse, N.Y., and actually you put it on the shelves and try to sell it and see if the people will buy at the price and the weight we presented, and sometimes it takes off like a skyrocket.

We brought out a new spaghetti, Franco-American Spaghetti Gold. They just go through the ceiling. We happened to hit the consumer fancy. We brought out a few new things that didn't work. We tried to sell New England style fish chowder. If you ever try to do that in Chicago, believe me it doesn't sell, but up in New England it is a great thing.

Snapper soup sells in Washington, Baltimore, Philadelphia, New York. It won't sell at all in California or Illinois, although we get the snapping turtle meat from Mississippi bayous.

Mr. CURTIN. Assuming that this legislation which we are now considering was enacted into law, would it in any way interfere with that research?

Mr. MURPHY. It sure would. We would have to worry all the time about whether the Government would let us go ahead and we would have to weigh and consider whether the chances are great enough of their frowning on it for us to go and get approval ahead of time or whether we take a chance on it and spend the money and then come in after it was all set to go and say no.

They might hold it up for an indeterminate length of time if published. I don't know. This is a new way of life for us. We never operate this way and we are scared of it frankly.

Mr. CURTIN. I inquired of Chairman Dixon regarding that problem—how long one of these requests would lay in his commission before there would be action on it, either affirmative or negative—and, as I recall his answer, he said about 1 week.

Do you think he was optimistic in that estimate?

Mr. MURPHY. You mean a year and 1 week?

Mr. CURTIN. No; he said 1 week.

Mr. MURPHY. Oh, no. The Government does not move that fast, sir, on new things.

Mr. CURTIN. His theory was that you could go to them for some form of preliminary approval and that normally it would be given very quickly, or perhaps in 1 week.

Mr. MURPHY. Oh, no, no. Under this law it has to be submitted to a council first of representatives of different groups and they have to read about it and it would have to go into the Federal Register. It would be a long procedure, sir.

Mr. CURTIN. Have you had any experience with getting such approvals through any agency of the Federal Government on problems such as this?

Mr. MURPHY. We never had anything like this before in our lives.

Mr. CURTIN. I presume, then, you have no idea as to how much time would be lost before there would be action.

Mr. MURPHY. No, but I spent  $3\frac{1}{2}$  years or almost  $3\frac{1}{2}$  years during the war and I was in the War Production Board and next to my office was OPA and I know how long it took the company to try to get any kind of decision out of OPA, so I assume we would have the same problem here.

Mr. CURTIN. That is all. Thank you, sir.

Thank you.

Mr. ROGERS of Texas. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. Murphy, does your company have any difficulty with the Federal Trade Commission or the Food and Drug Administration in the administration of existing law?

Mr. MURPHY. No, sir. We have inspectors, meat inspectors, poultry inspectors, in most all of our plants. This is according to law. Actually I think they use our plants as training grounds for some of the new ones.

Mr. MACKAY. You painted the picture of the possible abuse by the Government and I was just interested to know if you imply there is any abuse at the present time?

Mr. MURPHY. They are not trying to tell us what size and shape to put packages in.

Mr. MACKAY. You would give them good marks on their performance now?

Mr. MURPHY. Oh, yes.

Mr. MACKAY. Do you think section 3 adds anything to existing law or do you offer any objection to it? Everybody has been worried about this packaging part of the bill.

Mr. MURPHY. We are not worried about it. I think packages ought to be labeled to tell what is in them without revealing proprietary information.

Mr. MACKAY. I was interested in your suggestion we would do well to go to fluid ounces. What would be the advantages to go to that?

Mr. MURPHY. Well, you couldn't go to it in a cornflake package, I don't think. The advantage to us would be to the consumer. She wouldn't be worried about one can has  $10\frac{3}{4}$  ounces, another has an  $11\frac{1}{4}$  ounces. We run into this in a new country when we start to market.

Mr. MACKAY. You say the other countries do use the fluid ounces?

Mr. MURPHY. Yes. When our export sales are all in this, when we go into new markets, when we are allowed, we worry about one package size,  $10\frac{3}{4}$ , another one says  $11\frac{1}{4}$ , but the housewife in America never even looks at it. She knows what Campbell soup is.

**Mr. MACKAY.** Do you see any deception now or confusion by the manufacturers of soups, in particular, in marketing? Do you think the charge, that I certainly think is valid in certain commodities, applies in any way to any of your competitors?

**Mr. MURPHY.** I don't know of any. I think it is the death knell for a company or industry to kid the consumer. I suppose there is some attempt some places, but we would consider this really faulty management for anybody trying to kid that housewife.

You can put a product on the market. Let me tell you how smart this housewife is. We can make an improvement in the soup and say nothing about it in our advertising, just start to market it. Within 30 days the sales start to go up.

**Mr. MACKAY.** I would like to ask you to look at section 3 on labeling to see if you really offer any objection to it because it appears to me that no one who has come before us has objected to it.

**Mr. MURPHY.** May we furnish you any information we have on this.

(The information requested, when supplied, will be found in the committee files.)

**Mr. MACKAY.** Yes, sir.

Thank you, Mr. Chairman. No further questions.

**Mr. ROGERS of Texas.** Mr. Cunningham?

Let the Chair make this observation. We are going to try to finish with this witness even though the House is in session.

**Mr. Cunningham.**

**Mr. CUNNINGHAM.** Thank you, Mr. Chairman.

**Mr. Murphy,** I too was impressed with your testimony and I agree with the chairman that certainly we don't want to penalize companies such as yours. There have been some nuisances that I would like to get at such as the cents off, and the jumbo, and all that because that is annoying and confusing to the consumer, the housewife.

I think if we got rid of such practices as these we wouldn't need to pass legislation that would penalize industries such as yours that are really doing a good job in packaging, and selling, and merchandising. I know that you are concerned about making public your formulas as you mentioned, which is more or less sort of a copyright feature because it would tip off your competitors, as you testified, and it would seem to me, and I wonder if you agree, that if you had to make this public and all your competitors would grab your secrets that may tend to diminish competition?

**Mr. MURPHY.** Yes, sir, I think it would, sir.

**Mr. CUNNINGHAM.** I was a member of the National Commission on Food Marketing and in our report we dwelled at length on the matter of competition. One of the most serious trends we feel in the food industry is the gradual elimination of competition.

We think that is not good for the consumer and so I certainly wouldn't be in favor of anything drastic that would lessen competition because that is the lifeblood of this economy and therefore I would not want anything in the way of a severe penalty placed upon industry who depend upon competition to market and sell their product and grow and prosper.

I presume that would be your feeling?

Mr. MURPHY. Yes, sir.

Mr. CUNNINGHAM. But we do have the little nuisances like cents off and jumbo quarts, and so on. I think if there are any inherent difficulties it is those little things and I think we can deal with those adequately in this bill without penalizing industries such as you represent.

Mr. Murphy, we have had witnesses who have presented or submitted to us various studies or surveys as to consumer likes, dislikes, et cetera.

I don't know if this really bears on this subject, but do you know of any survey that has been made which would indicate percentage-wise how many consumers shop directly in a grocery store and how many order their groceries by telephone for delivery? Do you know of any figures?

Mr. MURPHY. Yes, there are figures, Mr. Cunningham.

The percentage that shop by phone I believe is below 1 percent.

Mr. CUNNINGHAM. That do?

Mr. MURPHY. Very small.

Mr. CUNNINGHAM. I was thinking it might be larger. I think those people that shop by phone are only interested in good wholesome products and they are not too much concerned about what the size and shape is.

Mr. MURPHY. You know, most women consider it part of their daily lives. They consider it a lot of fun to shop in these stores and they will wander around and visit and pry in here and pry in there. I think that there would be a lot more shopping by phone if it wasn't such a pleasure to shop in a modern store.

Mr. CUNNINGHAM. They have become very attractive. I don't mind shopping myself, just for relaxation.

Thank you, sir. That is all the questions I have and again I say that I am very much impressed with your testimony.

Mr. MURPHY. Thank you.

Mr. ROGERS of Texas. Mr. Adams.

Mr. ADAMS. Mr. Chairman.

Mr. Murphy, I enjoyed your testimony. First, I would like to inquire, do you agree that up through section 5(c)(1) this is nothing more than a labeling bill?

Mr. MURPHY. Yes, sir.

Mr. ADAMS. Basically, isn't it?

Mr. MURPHY. Beyond that it gets into control.

Mr. ADAMS. We will get to that, beyond 5(c)(1), but up to 5(c)(1) this would have no effect on your industry other than a possible requirement that you add something to the label perhaps so you would have a comparison in fluid ounces?

Mr. MURPHY. Yes.

Mr. ADAMS. Basically?

Mr. MURPHY. That is right.

Mr. ADAMS. Second, your industry has been stabilized, has it not, through the efforts within the industry for approximately 20 years now, hasn't it?

Mr. MURPHY. Yes.

Mr. ADAMS. You have gone from about 200 varieties down to about 10, using the volume standard?

Mr. MURPHY. 200 what?

Mr. ADAMS. 200 varieties of cans and containers down to, well, I don't remember—

Mr. MURPHY. There were very many more than that, sir.

Mr. ADAMS. We have a very limited number now and the industry has stabilized on certain volume containers that are well known in the industry and to a very great degree you market those, do you not?

Mr. MURPHY. Something like 10, sir.

Mr. ADAMS. I mean you are down to a limited number of categories?

Mr. MURPHY. In the soup business, yes.

Mr. ADAMS. The can business?

Mr. MURPHY. How many are there in the can business? There must be a hundred sizes.

Mr. ADAMS. Actually your industry has been used as an example of what might be done under other provisions of this bill to really assist some other industries to avoid a proliferation. I don't know whether you were here during some of the other testimony.

Mr. MURPHY. I read all of the testimony, sir.

Mr. ADAMS. This has been done. I want to get to a couple of points you mentioned; first on formulas.

I would like to know why or where you think in this bill there is anything that would require you to do any more than is in the present law in terms of disclosing your private formulas.

Mr. MURPHY. The word "composition."

Mr. ADAMS. All right. On page 7 of this bill it states under (4)—this is 5(c) (4)—

Require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act) that information with respect to the ingredients and composition of any consumer commodity (other than information concerning proprietary trade secrets) be placed upon packages containing that commodity.

Isn't that a clear exemption that covers the specific problem of your formula?

Mr. MURPHY. No, sir.

Mr. ADAMS. All right.

Mr. MURPHY. May I explain why?

Mr. ADAMS. I will read you the present statute and you tell me why you think that this is more difficult for you than the present statute.

The present one says this and this is 21 U.S.C. 341:

Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container.

Now, where does this bill, with the exemption that I mentioned, make it harder on you to protect your formulas than under present law?

Mr. MURPHY. Under this bill this word "composition" and the definition. What an administrator might consider a proprietary secret might be different from what we consider a proprietary secret, No. 1; No. 2, the word "composition."

Mr. ADAMS. All right, the word "composition." We do have a specific exclusion on formulas. Would you agree that these sections



are regulation producing sections? First the Administrator must come in and put the proposed promulgation of a regulation in the Federal Register and there state that a practice will impair the ability of consumers to make price unit comparisons. He has to first publish this in the Federal Register before he can do anything.

Would you agree that that has to be done first?

Mr. MURPHY. Yes.

Mr. ADAMS. Then after he does that any industry can come in and say we would rather use voluntary standards and the industry can demand time to use voluntary standards before the promulgating authority can do anything?

Mr. MURPHY. Mr. Adams, we don't even talk to other members in our industry and we won't.

Mr. ADAMS. All right.

Mr. MURPHY. Law or not. We are not going to talk to our competitors.

Mr. ADAMS. You have already.

Mr. MURPHY. We have overriding legislation. No, we have not, sir. We don't have any voluntary standards on soup with our competitors.

Mr. ADAMS. Oh, but you do have.

Mr. MURPHY. No, we don't.

Mr. ADAMS. You have the standard in can sizes.

Mr. MURPHY. No.

Mr. ADAMS. You do not?

Mr. MURPHY. No. On soup.

Mr. ADAMS. No; standardized can sizes.

Mr. MURPHY. We don't. We don't talk to our competitors about anything.

Mr. ADAMS. All right.

Mr. MURPHY. I revealed two things today here and I did it because of the great importance we consider this legislation and it is going to cost us something but we will take that cost on the hope that it makes an impression.

Mr. ADAMS. All right.

Now, do you have a standardized can size that you use for your soup, your No. 1 can?

Mr. MURPHY. We make soup in certain can sizes today.

Mr. ADAMS. It is the same size that you sell?

Mr. MURPHY. This is our can size today.

Mr. ADAMS. Does your competitor have a can size?

Mr. MURPHY. We have dozens of competitors.

Mr. ADAMS. All right, dozens of competitors. Do they have a can size that is comparable to that?

Mr. MURPHY. Sure. They use the same can size and other can sizes.

Mr. ADAMS. A housewife can come in and she sees your can size and she sees the 12 other can sizes and she can compare can sizes and thus prices, can't she? This is what we are talking about in terms of your getting together with your competitors and talking over what you are going to do. This you have accomplished within your industry many years ago, and is something that is very good. In effect we believe it is a good model for some others.

In addition, we have a whole series of exclusions in this bill that prevent regulations going against the voluntary standard, will prevent the Secretary doing anything to a customarily used container and will not allow it to vary from a voluntary product standard, or to allow a Secretary to go in and preclude the use of any package of particular dimensions or capacity, customarily used for distribution of related products of varying densities, which would specifically cover soup.

Mr. MURPHY. What do we want to do with triple condensed soup? What is our procedure there?

Mr. ADAMS. Is there anything in this bill that prevents you from putting out in triple condensed soup?

Mr. MURPHY. Not if the Federal Administrator says it is OK.

Mr. ADAMS. No; I mean without any requirement.

Mr. MURPHY. I say if this is passed.

Mr. ADAMS. What if it is passed and you have your present voluntary standard in effect, which is in effect?

Mr. MURPHY. It is voluntary providing the Federal Administrator approves it.

Mr. ADAMS. You can use it as a protection under all of the things that are presently written into the bill. Now, what in that present situation prevents you from taking your No. 1 can and putting triple condensed soup in it?

Mr. MURPHY. Nothing, nothing, but let us say that this would not be successfully marketed in the No. 1 can.

Mr. ADAMS. Now this brings me to what I would hope that your counsel perhaps could do, and I have asked others to do this.

It may be necessary to have an exemption for innovations and you may want to have 1 year on the theory that this is the time it will take to put in a new innovation in size, shape, weight, and so on.

I would like to know what your proposal is or what your marketing people who know about these problems would propose that you feel you need or should have as a protection.

I ask you that on the assumption that most of the industry witnesses have said that those proposing the regulation are going to be absolutely arbitrary and unreasonable. I don't believe it but let's assume the secretary is going to be a complete failure as an administrator. We will say he is completely arbitrary.

If you want something written in as a legislative protection against this potential administrator, I would like to know what it is.

Mr. MURPHY. Let us say that we had 6 months. We were able to do what we wanted for 6 months and then the administrator says stop it.

Mr. ADAMS. What we are saying is that you set up a procedure that you can vary standards, do it for 6 months, then for him to come in. In other words, this gives you your competitive jump.

Mr. MURPHY. Then he comes in and says yes or no?

Mr. ADAMS. Then you come in or the industry comes in—

Mr. MURPHY. Not the industry, sir. We are not going to do it on an industry basis. We are going to do nothing on an industry basis.

Mr. ADAMS. A demand is made that this product impairs the ability of the consumer to make this price comparison. Someone comes in to regulate.

Now, you have this jump on the market and you have 18 months more that you fight through this before the regulations are effective and the administrator can act. You have judicial review after that to check the arbitrariness. Don't you have enough checks? Don't you think that you have pretty good insulation?

Mr. MURPHY. Absolutely no. You have made all the expenditure, including all the marketing innovation, and then the administrator can knock it into a cocked hat.

Mr. ADAMS. After he has been through court and after he has been 18 months——

Mr. MURPHY. I don't care. He still has the right under this law to knock it into a cocked hat by an arbitrary decision.

Mr. ADAMS. I will follow up on Mr. Mackay's question.

Have you had this experience?

Mr. MURPHY. We have never had anything like this before.

Mr. ADAMS. Well, you have had standards required in 341 where they can control fill.

Mr. MURPHY. Fill?

Mr. ADAMS. Or they can control quantity and quality designations presently under the law.

Mr. MURPHY. They establish certain quantity designations——

Mr. ADAMS. They can go right down and say, for example, that you have to put 5 ounces of oysters in a No. 10 can.

Mr. MURPHY. They cannot, sir.

Mr. ADAMS. I would say to you, Mr. Murphy, that the ninth circuit has said that they can—and they have—and they did in the *Willapoint Oyster* case. You have never had to do any of this. You have had such items standardized and you have things operating very well so your——

Mr. MURPHY. There has never been any attempt to control package shape, size, or never been any attempt to have you guilty until you are proven innocent in this manner.

Mr. ADAMS. Is that what you believe this bill does?

Mr. MURPHY. In section 5, yes.

Mr. ADAMS. I have one last question and that is do you agree that there are some products in the supermarket where, because of weights, sizes, compositions, price comparisons by a housewife in terms of per unit cost are very difficult and almost impossible to compute unless you carry a slide rule?

Mr. MURPHY. Yes, sir; but I will tell you that this bill as now written would only correct a very minor portion of those products. I will just take our items. We have three different prices.

Tomato soup is one price; vegetable soup is another price; beef soup is another price, because of the cost of the ingredients. This may sell four cans at 45 cents. The vegetable soup may sell seven cans for a dollar. A beef soup may sell three cans for 50 cents.

Believe me you need a slide rule to figure this out, don't you?

Mr. ADAMS. I agree with you, I think the average housewife——

Mr. MURPHY. Should we have regulations that say that retailers must price everything according to certain prices? How are you going to get rid of the confusion unless you follow through all the way?

Mr. ADAMS. Well, let me just follow through with your example. On each of those she has a standard container size. She has to divide, I agree, to figure out the price of each can and I completely agree that she is going to decide whether she likes split pea soup or tomato soup or something else. However, I would give you an example I used the other day and I won't go through it all with you again, but assume two packages of feathers, which are identical type feathers and in an identical box, and because of difficulties in the industry, and I think this is something improper in industry—I don't think they are trying to do something fraudulent, but on these identical feathers, one package, as I remember was  $15\frac{3}{4}$  ounces at 56 cents and the other was 1 pound,  $5\frac{3}{10}$  ounces at 71 cents. Which is the better buy?

Mr. MURPHY. What kind of feathers are in them?

Mr. ADAMS. Identical feathers, but one of them is going to cost you almost 6 cents a pound more. I think what we want to do or what we are trying to do basically in this is just have simply a weights and measures and labeling bill. I am not trying to tell everybody they have to fit into a certain square box, but just help the housewives a little bit.

Mr. MURPHY. As far as putting on packages exactly what is in them, and I think this is great, and as far as this business of jumbo, and super, and this thing, we wouldn't even touch them with a 10-foot pole. We deliberately understate in our advertising, in our product illustrations, so the consumer finds out it is better than it looks.

We deliberately do this. This is better advertising and so forth. But if we are going to try to have a Government do the shopping for our housewives, boy, we have a job on our hands. We really have a job on our hands.

Mr. ADAMS. I agree completely with you, Mr. Murphy, and I think that the members of this committee do, too. We are not going to try to tell everybody that they have to have absolutely standardized containers and absolute weights and all of this thing, but what we are trying to do is do what governments have been doing since Biblical times, simply get a weight and measure standard that makes it possible for people who are buying products to make some comparisons, not perfect ones, but some comparisons.

Your industry has done it. By your industry I am using that—

Mr. MURPHY. You mean the canning industry?

Mr. ADAMS. The canning industry has done this and this is an example of techniques that can be applied elsewhere, not to every specialty item, and I would be very willing if somebody wanted to come up and offer an amendment on specialty items—in other words, when you are packaging in soft packages and things of the type where people want to buy goldfish crackers or, as somebody brought in the other day, the doodads, or another specialty item then these are bought on a specialty basis. But the housewife that wants to go in and wants to compare the price at which she is buying instant coffee in one container as opposed to another and what she is getting in the different sizes and varying weights and varying compositions. We just want to give her a little better chance. That is all.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Thank you, Mr. Murphy.

Mr. CURTIN. Mr. Chairman, before you excuse this witness I wonder if I may ask him one other question.

Mr. ROGERS of Texas. The gentleman is recognized.

Mr. CURTIN. Mr. Murphy, I meant to ask you a question on the problem of having printed on the package the number of servings contained therein. This seems to lead to some confusion because conceivably one person's idea of what is a serving is different from another person's.

Mr. MURPHY. Why don't you knock it out altogether?

Mr. CURTIN. I wondered what your feeling was on that.

Mr. MURPHY. We used to do that way back in 1906. But what is a serving? The Congressman that was here before, serving for him was different from the serving of a strapping 21-year-old, and our youngest son who is now overseas in Korea eats a can or a can and a half. My wife and I have some left over with a can. So this serving thing is for the birds.

Mr. CURTIN. Then you feel the question of putting estimated servings on the label could be eliminated without any great harm?

Mr. MURPHY. I don't think the housewife pays any attention to it.

Mr. CURTIN. Thank you.

Mr. NELSEN. Mr. Chairman.

Mr. ROGERS of Texas. Mr. Nelsen.

Mr. NELSEN. Mr. Murphy, I have here the "Organization Procedures, Rules of Practice, and Statutes" for the Federal Trade Commission, and they have in their procedures what is known as the Division of Trade Practice Conferences and Guides, and this division administers the trade practice conference programs under which trade practice interpretive rules are promulgated for particular industries and prepares and recommends to the Commission appropriate guides dealing with legality of widely used trade practices.

It is my understanding that many of the rules and regulations that have come up have been voluntarily agreed upon and have been set up as standards and, as you have pointed out in your testimony, the great percentage of the food processors are moving along and doing a very fine job and only a small percentage have been guilty of malpractice.

Now, as I understand your testimony you feel that actually the practices that we have been using will be interfered with by this bill and the practices that we have been using have been widely successful, is that not true?

Mr. MURPHY. We will be under one set of regulations for our poultry and our beef products and completely another set of regulations for the products that are not poultry and beef.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Thank you very much, Mr. Murphy.

The committee will stand adjourned until 10 o'clock in the morning.

(Whereupon, at 12:25 p.m. the hearing was recessed, to reconvene at 10 a.m., Wednesday, August 17, 1966.)



## FAIR PACKAGING AND LABELING

---

WEDNESDAY, AUGUST 17, 1933

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The committee is still considering the fair packaging and labeling bills, and we have as our first witness this morning one of our distinguished colleagues from the great State of New York, Mr. Lester Wolff.

Mr. Wolff, will you take the stand, please? I want to congratulate you for taking the time to come over and give us the benefit of your views. You may start right in with your statement.

### STATEMENT OF HON. LESTER L. WOLFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WOLFF. Thank you very much, Mr. Chairman. I certainly appreciate the opportunity of your permitting me to come here and testify this morning on a bill that I think has great interest throughout the Nation. Let me congratulate you and the committee for the effort you are making on behalf of the consumers of the Nation in holding these hearings.

Although I cannot personally agree with all aspects of the legislation now under consideration, you are making a long-needed start toward bringing to public notice certain practices that raise consumer costs and reward deceit.

Before coming to Washington, I spent 20 years in the food marketing field and during that period I developed a great faith in the American housewife as purchasing agent for the families of the Nation. Although many of us here today may have a certain expertise in marketing, I doubt if we could quote correctly the price of a pound of butter or a quart of milk; yet any housewife could give you the price to the last fraction of a cent.

However, in the nonperishable items sold in packages, the housewife must rely upon the good faith of those from whom she purchases. And it is in the best interest of the retailer to see that she gets what she pays for. She may be taken in by deceptive packaging or labeling initially, but she will not be deceived forever.

A major source of marketing deception, in my opinion, is the use of such adjectives as "large," "economy," "family size," "giant," et cetera,

in describing a product. What do these terms mean in describing a product when no standards exist as to what constitutes small, medium, or large? Such adjectives are patently deceptive and should not be permitted to appear on any package.

Another purposely misleading practice is the "cents-off" deal. An item may be advertised as 5 cents off the regular price. But, what is the regular price? The consumer isn't told. "Cents-off" deals are misleading and sometimes amount to outright deception. Retailers should be required to indicate the regular price of items when "cents-off" deals are claimed. No area of merchandising, however, involves as many deceptive and misleading practices as does the widespread use of trading stamps in retail sales.

Trading stamps today are connected with close to \$50 billion in retail sales, and the consumers of the Nation pay the stamp companies an estimated \$1 billion annually as a tie-in to their retail purchases. In one recent year, a major stamp company printed three times as many trading stamps as the Federal Government printed postage stamps.

One survey showed that 1,000 trading stamps are issued annually to every man, woman, and child in the United States.

In times of rising prices such as we experience today, we must examine every area that contributes to the price spiral.

Earlier this year, an official of Safeway Stores, Inc., one of the Nation's largest chains, testified that his company considers stamps to be merchandise, and by the way, I have a recording of that testimony if you would like to hear it, Mr. Chairman. He states in there categorically, the fact that trading stamps are merchandise and are sold just as any other item in the store.

If stamps are merchandise, they are also labels, and come within the purview of this committee's inquiry.

Therefore, I am today offering to this committee a truth-in-trading-stamp amendment to prohibit the claims made by stamp companies and retailers that stamps are "free" or a "gift."

In *Sperry and Hutchinson v. Hertzberg* (69 N.J. Eq. 264, 60 Atl. 368) the court said:

"The stamp is practically a negotiable order for merchandise. It is a mistake to regard it as a gratuity."

Yet, stamp companies persist in claims that their operations are "a bonus for paying cash," "interest on the money you spend," "equivalent to cash in your pocket," or a "reward for patronage."

My amendment would prohibit such fraudulent claims. Trading stamps are neither free nor are they gifts. Rather, they are an added cost, tied in and tacked onto the family's weekly bill.

The closer one studies trading stamp operations, the more questionable practices come to light. For example, most companies charge top retail prices for the premiums they offer to stamp savers. Comparing normal retail prices for articles with the cash value of the stamps required to redeem the same articles from the stamp company redemption center can be a real eye opener.

A local Washington group (the Greater Washington Service Station Association) compared the advertised prices of a number of items in a local department store with the stamp catalog value of the same products. They multiplied the number of books required to buy an



item by the \$3.60-per-book rate service stations must pay for the stamps they "give" to their customers. A toaster advertised by the department store at \$9.99 cost the equivalent of \$25.20 in S. & H. green stamps.

A blender sold retail at \$29.88 cost \$57.60 in stamps.

A hair dryer advertised at \$24.99 cost \$43.30 in stamps.

The authority of this is an article that appeared called "Looking Into the Green Stamp Business," in New Republic, October 16, 1965, on page 9.

Stamp companies never relinquish title to their stamps—a fact which allows them to manipulate at will the number of stamps required for redemption of specific articles, or even drop the item from the next catalog thereby depriving a housewife of an item for which she has been saving for a considerable time.

Therefore, I am further offering an amendment today to require that the companies set forth on the face of each stamp they publish the true value of that stamp in cents or any fraction thereof, and that any catalogs or advertising of the company state the monetary value of the premiums offered.

This amendment could at least secure for the housewife who saves stamps a fair return. She has already paid for the premium tacked on in the tied-in groceries she has purchased.

Mr. Chairman, when trading stamps were a new gimmick and only a few stores carried them, their cost to the retailer was undoubtedly absorbed in the extra volume of business the stamps generated. But today, when nearly every retailer carries stamps, their costs are passed on to the consumer in increased prices.

Such sharply increasing consumer prices are causing increased concern throughout the Nation. The recent report of the National Commission on Food Marketing cites trading stamps as a factor in rising food costs.

The Secretary of Agriculture has recently voiced similar charges.

In my inquiry into all aspects of trading stamp operations, a study which I have been conducting for the past 18 months, the conclusion became inescapable that trading stamps are a significant factor in rising consumer costs, and I view it as our duty to look into the possibility of remedial legislation.

One billion dollars in the form of trading stamps are sold each year in the United States. The public should not be deceived or misled as to what they are paying for, what the true cost is and where the benefits lie.

We here today have an opportunity in these proceedings to correct a few of the many wrongs today afflicting the consumer through trading stamps.

Adoption of these truth in trading stamps amendments will help us to fulfill our obligations to those whose interests we represent. They are entitled to the truth, the whole truth, and nothing but the truth.

I have an amendment here for you, sir, if you would like me to offer it to you.

The CHAIRMAN. Yes, we would like to have it.

Mr. WOLFF. The amendment, on page 3, after line 2, insert the following:

"No person shall distribute or cause to be distributed in commerce any trading stamps unless such stamps and their issuance are and have been in conformity with regulations prescribed by the Federal Trade Commission which shall provide that—

"(1) each trading stamp issued by a trading stamp company set forth on its face its value in cents or any fraction thereof, as fixed by such company.

"(2) any written or printed statements relating to goods, services, or other things of value made available by a trading stamp company to redeem stamps issued by it state the monetary value of such goods, services or other things of value, as fixed by such company, and be available for redemption of stamps issued by it having an aggregate value as set forth on their face, equal to the value of such goods, services, or others things of value, and,

"(3) the terms 'free' and 'gift' shall not be used on or in connection with trading stamps or such goods and services, or other things of value or in any catalogs or advertising used in connection with them."

On page 5, line 12, immediately before the period, insert the following: "and with respect to trading stamps."

On page 12, line 18, immediately after "or cosmetic," insert the following: "or with respect to trading stamps."

On page 13, line 7, immediately after "consumer commodity" insert the following: "or with respect to trading stamps."

On page 13, line 23, immediately before the period insert the following: "and regulation of trading stamps."

On page 17, after line 2, insert the following:

"The term 'trading stamp' means a stamp or similar device which is made available to a purchaser in connection with the retail trade transaction involving any goods, services, entertainment, or other things of value, and which purport to entitle the recipient or other holder thereof on presentation for redemption, to receive any goods, services, or other thing of value; but does not include any coupon, ticket, certificate, or other similar device which may be redeemed only in connection with another purchase.

"The term 'trading stamp company' means any person which engages in the business of selling trading stamps or which issues trading stamps and redeems such stamps with goods, services, or other things of value, if such stamps are (a) sold or issued in commerce; (b) made available in connection with the sale in commerce of any goods, services, entertainment, or other things of value; (c) are redeemed with goods, services, entertainment, or other things of value in commerce; or (d) are made available in connection with the sales of any person in or affecting commerce."

The CHAIRMAN. Thank you, Mr. Wolff. Are there any questions?

Mr. WATSON. Thank you, Mr. Chairman. I want to commend our colleague for a very fine statement. I might just add parenthetically that when I was a member of the general assembly in South Carolina we, at one time, thought that we would do something about this trading stamp business. I believe it was shortly after the Reader's Digest article which I am sure you are familiar with.

Someone introduced a bill to outlaw trading stamps in South Carolina. We thought that this would be in the interest of the consuming

public, and it would help the housewife. It so happened that we were wrong on that assumption. I don't know who it was that made the statement, but they said in the great American system everyone has a right to be a fool.

Shortly after this bill was introduced, which I looked upon with considerable support at the time, we deluged with about 5,000 telegrams from housewives throughout the State of South Carolina. While the idea was good, I am sure that you can certainly appreciate the fact that the legislation was quickly abandoned.

So, while I share your concern in this particular field, and I, too, believe that certainly there needs to be some guidelines in regard to the use of trading stamps, but at the same time I would caution that you are really getting into a possible hornet's nest in trying to deprive these ladies of these little extra fringe benefits.

I have a question on your amendment. I believe you said your amendment would specify that the cash value as fixed by the company must be placed on the stamp. Well, how are you going to avoid deception or how are you going to help the housewife when you leave it to the company to determine and put the value of the stamp on the particular item?

Mr. WOLFF. Mr. Watson, I appreciate the comments you have made. It shows you have had experience in this field, and there are a few points I would like to make in answer to your statement. No. 1, I do not hope that this amendment or any type of legislation will ever outlaw trading stamps. I think the American public has the choice to make and they should not be deprived of that choice.

The amendment seems to clarify certain misconceptions, however. The idea basically here is the same way that you are considering legislation to eliminate deception in the tie-in sale, that the stamp be clearly marked with a price that is the value the company sets upon it. This value then in turn would tie in to the catalog, and I should hope that the companies would be then in a position that they must either offer the consumer a choice that she could have either cash for that stamp or she could get a premium for that stamp.

The idea is not to eliminate the stamp, but to give the customer a further choice. With food prices being what they are today, there are many women who would like to save the cash instead of saving the stamps.

The idea basically here is to give the housewife the opportunity of taking that money and using it in her own free choice, in going out to either buy these premiums with the money that she has saved, or to redeem it for the premiums that she would want from the trading company.

Mr. WATSON. I applaud your effort. I am reminded of an experience of a businessman, or rather a little groceryman. He related it to me while we were in the throes of this discussion down there.

He said that he had reduced an item from 50 to 49 cents, but one lady came in the place of business and really raked him over the coals. She said the only reason he reduced it 1 cent was to deny her an extra trading stamp.

He said, of course, the stamp is only one-tenth of a cent and he had given her a penny discount. He said regardless of how hard he tried to prevail upon her that she was getting a better bargain and getting

the 1-cent discount, he never did convince that determined lady that she was getting a better bargain.

While I applaud your effort, I think that you should look carefully into this particular field.

Mr. WOLFF. There is something similar to that, if I may, Mr. Watson. Having been in the grocery field for a long time before coming to Congress, I recall a pricing situation similar to what you have illustrated here. It was the fact that there had been times when an item has sold for 20 cents and the retailer had put a two for 41-cent price on it and sold about five times as many as he did at 20 cents apiece.

Mr. NELSEN. I noted one of your comments that the American public has a chance to make a choice. I also note the second paragraph in your statement in which you point out that the housewife "will not be deceived forever."

I quite agree with you that the great emphasis is certainly in seeking a bargain in the market, for an informed person to take a look at what she is buying, and most of them do.

Now, you made reference to the giant size and economy size. This point is a basic point that you make in your testimony. However, you do not deal with many other phases of this legislation.

A great portion of the testimony that we have received here from witnesses, even representing the administration, point to things that are already covered in the law. It is as if we were now bringing in a new bill that will require that a package indicate weight and ingredients. This, however, is required under present law.

Almost the great bulk of the testimony would leave me with the impression that we don't do these things at the present time. I am sure that you having been in the business are well aware of the fact that packages are marked as to weight and content. There are some tricky terms I am sure that fool some people, but not too often.

Thank you very much.

The CHAIRMAN. We appreciate your testimony, Mr. Wolff, and the presentation of your views. I think you have hit on one spot, and I don't know what the solution is. As Mr. Watson has said, it is certainly a deceptive practice in many ways.

Thank you.

Our next witness is Mr. Fred J. Greiner, chairman of the Dairy Industry Committee and executive vice president of the Evaporated Milk Association of Chicago, Ill.

**STATEMENT OF FRED J. GREINER, CHAIRMAN OF THE DAIRY INDUSTRY COMMITTEE AND EXECUTIVE VICE PRESIDENT OF THE EVAPORATED MILK ASSOCIATION, OF CHICAGO, ILL.; ACCOMPANIED BY HIS COUNSEL, BENJAMIN G. HABBERTON, OF THE FIRM OF FISTERE & HABBERTON, WASHINGTON, D.C.**

Mr. GREINER. I would like to have join me at the table Mr. Ben Habberton, of the law firm of Fistere & Habberton, Washington, D.C., counsel for the Dairy Industry Committee.

My name is Fred J. Greiner, and I am executive vice president of the Evaporated Milk Association in Chicago, Ill.; and I am chairman of the Dairy Industry Committee.

I will try to confine myself to those things which we feel in the dairy industry are inimical to us. This is a consolidated statement representing the American Butter Institute, American Dry Milk Institute, Evaporated Milk Association, International Association of Ice Cream Manufacturers, Milk Industry Foundation, National Creameries Association, and National Cheese Institute.

Our opposition is based on these facts as we see them. First of all, present laws at all levels of government offer adequate and extensive protection to consumers today. This is especially true in the dairy industry, in the case of dairy products as I will point out later.

The marketplace which reacts with "hair trigger" agility gives no indication that consumers are dissatisfied or confused or deceived in the case of dairy products.

The proposals would place additional administrative straitjackets upon ingenuity and creativeness in the marketing of dairy products. The dairy industry is highly regulated and is particularly sensitive to this point. If you will scan the list of dairy products you will note that it includes practically all of those marketed in the United States.

I would like to indicate what this means to you in the percentage of food industry affected by these measures.

Throughout its history the dairy industry has been consumer oriented. Milk and dairy products are one of the most important of the four food groups basic to the health and well-being of all Americans.

Consumers spent about 17 percent of their food dollar on dairy products, excluding butter. This is from USDA statistics. Thus we speak for the industry providing that 17 percent of the food dollar covered by this proposed legislation.

The regulations which these bills authorize to be promulgated are unnecessary as applied to the products of the dairy industry. They would create confusion and would be a step in the wrong direction. The dairy industry—one of the most basic in the food industry and, as indicated, one of the most highly regulated at all levels of government—now finds itself facing the possibility of another layer of regulations imposed by the Secretary or the Commissioner which we fear may be all too often ill conceived.

The Secretary has sufficient authority in the Food, Drug, and Cosmetic Act. Additional regulation-making power is not needed. The experience in the dairy industry is that whenever one of our manufacturers has products or labels examined by a Food and Drug inspector and found to be misbranded, the mere process of inspection and resultant discussion corrects the deficiency.

If there is an honest difference of opinion between Food and Drug and the manufacturer, we believe that such differences should be adjudicated in the courts on their merits. Specifically, we believe that the Food and Drug Administration should be required to prove that the practice is deceptive.

In addition to the misbranding section (sec. 403) of the Federal Food, Drug, and Cosmetic Act, the model law and regulation of the National Conference on Weights and Measures has been adopted in most States.

Administrative rules and regulations governing the placement of the net-weight statement and the prominence of displaying that state-

ment, type size, et cetera, on the principal display panel have been adopted in a number of States and are under active consideration in others.

Every pound of consumer-packaged cheese, every box of instant nonfat dry milk, every can of evaporated milk, every pound of butter, and every carton of ice cream where this model has been adopted must comply with these provisions.

Gentlemen of the committee, please consider these facts:

(1) Congress itself has established statutory standards for butter (21 U.S.C. 321(a)) and nonfat dry milk (21 U.S.C. 321(c)). These statutes provide that the standards therein are established for the purposes of the Food and Drug Act. Thus, they are brought under the full weight of the misbranding section of existing law.

(2) Evaporated milk, the food with which I am identified, was one of the earliest foods for which a definition and standard of identity was established. That standard requires complete label identification of the product as well as a label declaration when its vitamin D content is increased. A recent amendment to the standard requires a label declaration when a newly found useful ingredient is present.

(3) In 1960, after almost 20 years, and I want to emphasize again that that was 20 years of public hearings, studies, and deliberations, the Secretary of Health, Education, and Welfare promulgated definitions and standards of identity for ice cream, ice milk, sherbet, and water ices. These definitions and standards prescribe what ingredients the products must contain, what ingredients they may contain, and require elaborate label declarations with reference to flavoring ingredients.

The standards and findings together comprise 16 small-print pages in the July 27, 1960, issue of the Federal Register.

Frankly, we wonder, can it be possible that now only 6 years later it is necessary for Congress to pass new legislation enabling the Secretary to promulgate additional elaborate and far-reaching regulations applicable to the packaging and labeling of ice cream and other frozen desserts.

(4) In the case of the cheese industry, definitions and standards of identity have been established for 66 different kinds of cheese. Where necessary in the judgment of the Commissioner of Food and Drugs these standards require specific labeling declarations.

(5) The products of the fluid milk industry—the fresh perishable products of our industry—are presently subjected to regulation not only by the Food and Drug Administration, but also come under extensive regulation by municipalities and States. The U.S. Public Health Service plays a major part in this system of regulation. State and municipal weights and measures agencies as well as the U.S. Bureau of Standards have long been active in decisions affecting packaging and labeling of these products.

Turning to specific sections of these bills, let me point out at least three sections that either duplicate existing legislation today or that would present an impractical or impossible situation for the dairy industry.

I refer first to section 5(c) (2) in which power is granted to “establish and define the net quantity of any product (in terms of weight,

measure, or count) which shall constitute a serving \* \* \*." This has been discussed before this committee.

What is meant by the "serving" of a food? Certainly it cannot be average for everyone, for the growing youth will have an average serving that is larger than that for those approaching the autumn of their existence. A person engaged in difficult physical work will have a different average serving than the person pursuing a sedentary occupation.

We submit that regulations designed to define a "serving" will be almost impossible to delineate using sound medical and nutritional information.

Section 5(c) (4) in S. 985 and H.R. 15440 both require that information with respect to ingredients and composition be placed upon packages containing that commodity. The two proposals differ considerably in their approach, however.

The authority conferred upon the Secretary by the Food, Drug, and Cosmetic Act, amended, has been regarded as adequate and effective for this purpose.

Scores of food standards have been established under section 401 of the act and hundreds of labels on supermarket shelves today meet all the requirements of these standards. We reiterate our opposition to these measures, but if in its judgment this committee, nevertheless, decides to report one or the other of these bills, we suggest deleting the comma in line 7, page 7, of S. 985 and, after the word "Act", adding the following: "or established by Act of Congress." This will clarify section 5(c) (4) in S. 985 as to its applicability to food products for which a standard of identity has been established by the Secretary or by act of Congress.

I might parenthetically say that the amendment placed in the bill in the Senate does take care of those products with standards adopted by Food and Drug, but it is clear as to whether or not they apply to those standards passed by act of Congress.

I believe it is the intent of the Senate to have it that way, but I would ask that you consider such an amendment.

Our third point concerns the provisions of section 5(c) (5) of H.R. 15440 preventing the distribution of a commodity for retail sale in packages of sizes, shapes, et cetera, which are likely to deceive. This section is not a part of S. 985 as passed by the Senate and we urge its deletion from H.R. 15440, again if in the judgment of this committee a bill is to be reported. This section raises the serious question of prior approval by a Government agency of package design before entering the marketplace. It would place additional administrative straitjackets upon ingenuity in the marketing of dairy products.

In conclusion I submit that the massive body of statutes, ordinances, rules, and regulations at all levels of government today regulating and packaging of dairy products are burdensome and that less rather than more regulation in this field would enable the dairy industry to better serve the American public. Accordingly, we believe that these bills should not be enacted in any form.

Mr. FRIEDEL (presiding). Thank you, Mr. Greiner. My first opinion is that I don't think you will be affected by this bill. You make recommendations on page 6 in the next to last paragraph, you think

you would like to have the clarifying section of "5(c) (4) of H.R. 15440 preventing the distribution of a commodity for retail sale in packages of sizes, shapes, et cetera, which are likely to deceive" established by the section.

In other words, you recommend an amendment.

Mr. GREINER. Is that at the top of page 6?

Mr. FRIEDEL. You say:

We suggest eliminating the comma in line 7, page 7 of S. 985 and after the word "Act" adding the following: "or established by Act of Congress."

Do you think that amendment would clarify this section? I think that you are unduly alarmed about it.

Mr. GREINER. It would clarify only one small portion of what we are "unduly alarmed" about, and that would be the ingredient labeling provision of this act. It still would not in one iota take away our opposition to the bills.

Mr. FRIEDEL. You are also worried about the size, shapes, and so on in packaging?

Mr. GREINER. That is right.

Mr. FRIEDEL. Well, every milk bottle you have does have the amount, a quart or four-fifths of a quart or a pint. Isn't that done today?

Mr. GREINER. Yes, sir; milk is sold in a standardized container or containers—pints and quarts and so on.

But I think that the problem here is who knows what may hold in the future? One of our real objections is to the regulatory-making power which is given, in the case of food, to the Commissioner. We can come to the Congress and before this committee when you have an act before you, and lay our case before you, and say "This is how it will affect us, and we either think this should or should not be passed." But once you pass on to the Commissioner the power to regulate, all we can do then is go to the Commissioner and then it depends upon one man's single judgment.

Once it becomes a regulation, we are lost, regardless of what our feeling is. We have the right to go before the Commissioner and he has to notify us by notice in the Federal Register and follow all of the procedures of the Administrative Procedures Act, and so on. But we feel basically we have a better day in court here, so to speak, when it comes to basic law which you are really talking about here, rather than giving all of this regulatory power to the Commissioner.

Mr. FRIEDEL. You still have the right under our bill, to have judicial review?

Mr. GREINER. But judicial review only upon the merits of whether or not the regulation which he made is in accordance with law, and not upon the merits of what the regulation might contain.

Mr. FRIEDEL. I thank you.

Mr. SPRINGER. Mr. Greiner, you are familiar with the language, all of the language of this bill, are you not?

Mr. GREINER. I have read the bill several times.

Mr. SPRINGER. Is this your counsel here with you?

Mr. GREINER. Yes, sir.

Mr. SPRINGER. Now, you can answer this or your counsel can answer it, but the proponents of this bill are saying that this does not regulate quality. Do you have any answer to that?



Mr. GREINER. Quality of product, you mean?

Mr. SPRINGER. Yes.

Mr. GREINER. I will turn to my counsel and ask him, but my answer is that it does not regulate quality per se. There are some sections dealing with composition.

Mr. SPRINGER. There is a whole lot of difference between quality and quality per se, that would be a matter of law, that did not affect it. What I am trying to find out is whether or not this bill has any regulatory power over quality.

Mr. GREINER. My counsel said that my original answer was essentially correct, unless you can call it to our attention where it is different.

Mr. SPRINGER. I know that the Federal Trade Commissioner made a slip in this testimony, and you will see it if you read it, and he used the word "quality." It is in the record. I asked him if this bill supposedly did not regulate quality. Then he modified his answer, and I am not using his exact language. And then he went back to modify this.

But there wasn't any doubt in his mind that he thought that there was power in this bill to cover a portion of quality.

Mr. GREINER. Well, No. 1, I am not familiar with the language that would affect quality.

Mr. SPRINGER. I examined him on certain sections of this bill, and I wish I had the bill in front of me now, because I read this very, very carefully, and I am not so sure that when you get into that that there are not certain powers which he would have regarding quality.

Mr. GREINER. We have found over a long period of time, that a law sometimes is stretched considerably by regulatory authority when it comes to regulation-making power.

Mr. SPRINGER. What you have said here, as I understand it, is when notice is published in the Register with reference to your own products, you already do regulate some quality, don't you?

Mr. GREINER. Oh, yes.

Mr. SPRINGER. They already have the power to regulate some quality.

Mr. GREINER. They have complete power to regulate quality.

Mr. SPRINGER. Now, this is what I am trying to find out. I think that you are a quality-regulated field, but some of these fields are not quality regulated, as you well know. They have no power to do it unless it is an unsafe food. But what I am trying to find out is whether when you used the word "quality" you were probably saying the truth. I know what "persuade" means, and as a matter of law it does regulate quality.

Maybe it doesn't in your case, because apparently you are already quality regulated.

Mr. HABBERTON. May I just say a word?

Mr. SPRINGER. Would you identify yourself, please?

Mr. HABBERTON. Benjamin G. Habberton, of the law firm of Fistere & Habberton, counsel for the Dairy Industry Committee. Under section 401 of the Federal Food, Drug, and Cosmetic Act, it is provided that the Secretary of Health, Education, and Welfare, if he finds that it will promote honesty and fair dealing in the interest of consumers,

he may establish a standard of identity, a standard of quality, or a standard of fill of container for any compounded food. All the Secretary has to do is to make this finding, that it will promote honesty and fair dealing in the interest of consumers, and he may establish all three standards of this kind, not only a standard of identity, but a standard of quality and a standard of fill of container.

Mr. SPRINGER. Then he already has the power to do it in some industries, doesn't he?

Mr. HABBERTON. He has, indeed.

Mr. SPRINGER. Let me go to just one other question, and I will have my 5 minutes. This is awfully important, because I have been asking every single industry members and I don't want to come up here with a bill which isn't going to add anything to the power which the Food and Drug Administration already has. There isn't any dispute by him or any other witness who appeared before this committee but what he has the power to prohibit deceptive practices now. Is that correct?

Mr. GREINER. That is correct.

Mr. SPRINGER. What you are doing here is attempting to standardize. I don't see that you are increasing any powers that they have to prevent deceptiveness because you already have it and he says that he has the power and he has admitted it before this committee. He says he doesn't have the staff, and you would have to have a staff for this bill. Why not give it to him for that?

There is one thing I want to find out. What is going to be the increase of costs, and what are going to be your cost problems if you go under this kind of a procedure?

Mr. GREINER. Well, I would say there are two answers to that question. First of all, it would be virtually impossible for us to determine what our cost factors are going to be until we know what kind of regulations this Commissioner may well adopt.

But second, generally speaking, we have not made an attempt to put a price tag on this bill insofar as the dairy industry is concerned. There just wasn't time, Mr. Springer.

Mr. SPRINGER. Let me say this: If you are very much interested in whether this bill is enacted, you will make that cost and get that in this record before these hearings conclude, because that is going to be, I think, the most important deciding factor in whether this bill is enacted.

I don't think anybody is going to vote in this committee if it shows that there is going to be a sizable increase in the cost of the product, when you aren't increasing the forcibility at all. Do you see what I mean?

Mr. GREINER. Yes, sir.

Mr. SPRINGER. It took a long time for me to get out of the president of the Campbell Soup industry what the costs are going to be. He said \$35 million, and this is only changes in packaging, but then he said if you want to take the whole question of concentrates which they are working on and if they get a triple concentrate, and they can't get it in the sized can, they can't tell how much it is going to cost.

Mr. GREINER. We could make some estimates, but as I indicated earlier, one of the real problems is this: In ice cream, if we had to label for every ingredient, there are literally hundreds of combinations of

ingredients in ice cream, depending on the sources of the butterfat, the nonfat solids, and so on.

This one is fantastic, to think of the cost accrued to the dairy industry of having a series of cartons for all of these various types of ice cream, if we had to list every ingredient.

Mr. SPRINGER. This is a highly competitive industry, isn't it?

Mr. GREINER. Very much so.

Mr. SPRINGER. It is one of the most competitive industries in the country, is that right?

Mr. GREINER. Yes.

Mr. SPRINGER. So that you are not going to absorb these costs, are you?

Mr. GREINER. No, sir.

Mr. SPRINGER. You are going to pass these costs on to whoever you sell to, the wholesaler or the retailer and he is going to pass on to the consumer. What we are interested to know is what this is going to cost the consumer. I am not going to support any bill at this point in history which is going to increase costs to the consumer, of any substantial increase.

Mr. GREINER. I would say to the Congressman that we will make an attempt to find in our industry what the costs might be, depending upon certain circumstances.

Mr. SPRINGER. Instead of sending it to this committee, will you please send a copy of that to each member of this committee, so that they can have it in hand?

Mr. GREINER. We will make every effort, sir.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Satterfield.

Mr. SATTERFIELD. I have no questions.

Mr. NELSEN. Thank you, Mr. Chairman. I notice on page 3 you point out specifically you believe that the Food and Drug Administration should be required to prove the practices deceptive. I have been pursuing the line of questions throughout this hearing that under the terms of this bill the penalty provisions would put you under the Federal Trade Commission and under the penalty clause. The processor would be restrained from a practice and he in turn would be guilty until he is proved innocent.

So in effect what you are saying here is that you wish to continue under the present practice where it is on a case-by-case basis. The Food and Drug Administration should bring the persons in who are—in their judgment—in violation, and I would agree with that statement. I compliment you for calling attention to it.

I would like to point out, also, that under the terms of the bill, the ingredients of a product are supposed to be listed on the package. I am advised that under the law in the manufacture of butter, for example, there is artificial coloring in butter, and there is no requirement in the law to state this fact on the package.

The public does not generally understand that butter naturally produced will vary in color. For example when cattle are on dry feed, there will be a variation of color. To make an attractive color there is a desire on the part of the manufacturers to have a uniform coloration.

Under the terms of this bill, it is my understanding that this color matter would enter into it because ingredients of the package must be listed. Have you given some thought to that?

Mr. GREINER. This has been our real fear, Mr. Nelsen, that many of the practices that we have adopted down through the years, under the present standards of identify for all of these products, including butter, which as I indicated has a standard set by Congress, that here we would have a situation where these products would suddenly find themselves in a complete state of chaos, almost, dependent upon the whim of the Commissioner. If he should decide that he now had the power to require all of this listing of ingredients which he didn't have before, or which he didn't exercise before, then we would have our problems in trying to comply.

Mr. NELSEN. Now, in the area of new products, I know that the margarine people who are our competitors—and I say "our" since I am a dairy farmer myself—they are fearful of the power in this bill because of innovations in different types of packages. I presume that the dairy industry would have an equal concern. I can imagine the frustration of the housewife going into the grocery store and seeing uniform packages all over the lot. I am sure that she enjoys a little variation also.

Mr. Chairman, I thank the gentleman for his very good statement. I am a dairy farmer in Minnesota, and I am glad to have testimony from the industry.

Thank you.

Mr. GILLIGAN. Thank you, Mr. Chairman.

I listened a moment ago, and I want to get the reference again to section 401.

Mr. HABBERTON. That is section 401 of the Federal Food, Drug, and Cosmetic Act.

Mr. GILLIGAN. Could you repeat again the language of that act, not verbatim, but in general?

Mr. HABBERTON. I think the language that I gave before is substantially correct, but I can read it from the act itself:

Whenever in the judgment of the Secretary, such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food under its common or usual name, so far as practicable, a reasonable definition and standard of identity, a reason and standard of quality, and/or reasonable standard of fill of containers.

Then it goes on for several paragraphs after that, but this has the relevant portion of the section which I have just read.

Mr. GILLIGAN. Thank you. I have no further questions.

Mr. FRIEDEL. Mr. Curtin, do you have any questions?

Mr. CURTIN. No, thank you, Mr. Chairman.

Mr. FRIEDEL. Are there any other questions?

Do you have any questions, Mr. Carter?

Mr. CARTER. On your packages of butter, you have no objection, and of course it is there at the present time, to state the weight, or even the unit price. Would you object to that?

Mr. GREINER. I don't believe there is anything in the act that would require a unit price declaration. I suspect that we would object to a unit price declaration.

However, I wouldn't care to comment officially on that.

Mr. CARTER. Why would you object to that? That is one of the purposes of this bill, to have comparability, so that a purchaser can compare prices of the different items.

Mr. GREINER. As a practical matter, as you are aware, Congressman, butter is traded on the market and values change almost daily. That is one thing. Secondly, it is sold in a standardized container, so that there is really no problem in making comparisons. I don't think the consumer has a problem in comparing one pound of butter with another pound of butter.

At least, I don't, in doing shopping. So, therefore, it isn't going to serve any real useful purpose to put into law something that is already being done, with a standardized container, and with the price placed on there now by the supermarket.

Mr. CARTER. I understand there is a problem about amounts and so on, but certainly I see no reason why a price couldn't be placed on the package. I doubt the advisability of putting in the number of market changes. But you can say for 1 pound or a quarter of a pound, whatever it might be, what the price is.

Mr. GREINER. Well, I would say this: We certainly feel that price should be declared on the package as it is presently being done in all supermarkets today to my knowledge. It is 69 cents a pound or 79 cents a pound or whatever the price might be, but it will be stated on a standardized container which is the pound package, generally.

If I may add, there is very little difficulty on the part of the consumer in making a price comparison between two or three brands of butter that she might see in the supermarket in the dairy case.

Mr. CARTER. There is no problem then about cheeses? Is it the same way about cheeses, the weights and the prices are placed upon the different packages?

Mr. GREINER. The weights and prices are both placed upon packages; yes, sir.

Mr. CARTER. They should be easily comparable. That is all I have, thank you, sir.

Mr. FRIEDEL. Mr. Watson, do you have any questions?

Mr. WATSON. Thank you, Mr. Chairman. I, too, appreciate the statement of the gentleman. I think he has made a significant contribution to the hearing. Contrary to the opinion expressed from my dear friend, the acting chairman now, I think that your industry would be affected by this legislation should it pass. I think off-hand immediately that the housewife no longer will be able to buy a half gallon of milk because fractions are no longer permitted, or a half pound of cheese or a half dozen eggs. I don't know whether eggs come under your purview, but I can see that now the consuming public is going to have to figure out some new ways in their buying habits.

I really feel the proponents of this legislation have indicted our educational system, that we today are so dumb that we are not able to buy in accordance with our needs.

I notice on page 1, you state the marketplace which reacts with hair-trigger agility gives no indication that consumers are dissatisfied or confused or deceived in the case of dairy products.

Now, we tried quite exhaustively to ascertain from Mrs. Peterson and from Chairman Dixon and others some specific examples of deception and untruth in advertising, and in marketing of products.

Frankly, we were able to get nothing more than generalities. I remember Mrs. Peterson waved her arm and said, "All you have to do is ask any of these ladies out here."

I assume that you would be the first one, your industry, to hear complaints from the consuming public, that you have been deceptive.

Since we have been trying to establish a basis for this legislation, how many complaints has your industry received from the consuming public that you engaged in deceptive or misleading labeling or misleading advertising or marketing of your product?

Mr. GREINER. To my knowledge, none of the organizations, nor the companies that they represent have had complaints of that nature. I state it to the best of my knowledge because obviously we haven't surveyed them, but there have been none brought to my attention and it has been a well-known fact among people in the industry that I was to present testimony here today, and thus I would have heard of them if they had been brought to their attention.

But we have had no complaints insofar as dairy products are concerned.

Mr. WATSON. So perhaps this legislation is the result of a great propaganda campaign to go out and convince the American buying public that they have been misled and may have been deceived all along.

Would you care to comment on that?

Mr. GREINER. Well, not without a great deal of passion, perhaps, but I feel quite strongly that it would be rather indiscreet for me to comment upon other industries and some of their problems. I can speak for ourselves. We don't know of any problems in our area, in the case of dairy products.

If anyone has any I wish they would bring them to our attention and any one of the agencies involved could bring them to our attention. Certainly the Food and Drug Administration, under whose jurisdiction now practically all of these products fall, should be aware if there are any, and I am certain they have the power, and they have more than enough power to take care of any indiscretion that may come on the part of industry where products may be mislabeled or the industry doing something that they shouldn't.

If I may say this, Mr. Watson, the Food and Drug Administration deemphasizes greatly the salutary effect of their inspections and things that go on whenever an inspector picks up a product for examination, or visits a plant for an examination of the plant facilities as well as the labeling and so on of the dairy food products involved.

My experience with our people is that they aren't scared to death, but they toe the line, so to speak, and they have a complete consciousness of what the law is, and they are trying, as Mr. Murphy stated yesterday, to be good citizens and do what they should.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Adams, have you any questions?

Mr. ADAMS. No, Mr. Chairman.

Mr. FRIEDEL. I want to thank you, Mr. Greiner.

The next witness will be Mr. James F. Hoge.

**STATEMENT OF JAMES F. HOGE, ON BEHALF OF THE PROPRIETARY ASSOCIATION**

Mr. FRIEDEL. Mr. Hoge, you may proceed as you wish.

Mr. HOGE. Thank you, Mr. Chairman. With your permission I would like the appendixes to my statement to appear in the record at the conclusion of my presentation.

Mr. FRIEDEL. Without objection, that will be done.

Mr. HOGE. Mr. Chairman and members of the committee, before I take my seat, let me say on behalf of my client and on behalf of myself, that we appreciate, very much, the opportunity to discuss this legislation with you.

Mr. Chairman, my name is James F. Hoge. I am a member of the bar of the State of New York and also of the State of North Carolina, where, until 1930, I was engaged in practice at Greensboro. In 1930 I moved to New York and since that time have been in the active practice there. I am now senior partner of the firm of Rogers, Hoge & Hills, whose address is 90 Park Avenue, New York City.

My client here today is the Proprietary Association, and I have had the privilege of being its general counsel for 32 years. I began in 1934.

The address of the association is in this city at 1700 Pennsylvania Avenue NW. The association was organized in 1881 and has been in continuous existence since. It has 98 active members. Their business is the manufacture and distribution of proprietary medicines, medicines which are completely compounded, packaged, and labeled for use by consumers.

These medicines are classified as over-the-counter items to distinguish them from prescription items. Illustrative of such articles are many well-known products, such as Vicks Vapo-Rub, Listerine, Bayer Aspirin, Bufferin, Anacin, Alka-Seltzer, Castoria, Murine, Phillips Milk of Magnesia, and so on.

The association also has associate members, 140 of them. They do not manufacture or distribute these articles, but they are interested in the manufacture and distribution by virtue of furnishing services and materials.

Let me say, Mr. Chairman, the association is entirely in sympathy with the stated purpose of these bills, the prevention of unfair and deceptive methods of packaging or labeling of consumer commodities. I may say for my association that we believe that it is not good business to engage in unfair or deceptive methods of packaging or labeling. We believe that medicines are now adequately covered in these respects by existing law, so adequately covered that they need not be included within the application of these bills.

So, our position is not one of opposition but of amendment; really, of further amendment and clarification. For in the Senate, by amendment, prescription drugs and drugs composed wholly or partly of insulin were exempted. Both S. 985 and H.R. 15440, at section 10(a) (3), on page 15, line 3, in both bills, provide that the term "consumer commodity" shall not include "any drug subject to the provisions of section 503(b) (1) or 506 of the Federal Food, Drug, and Cosmetic Act."

Section 503(b) (1) is the section which establishes prescription drugs and defines them. It was added to the law in 1951 by the so-called Durham-Humphrey amendment. Section 506 relates to drugs composed wholly or partly of insulin.

Mr. Chairman, it may be that other drugs are exempted. On page 15, at line 3 to line 5, you will see that sections 503(b) (1)——

Mr. FRIEDEL. Are you reading the Senate bill?

Mr. HOGE. Yes, but I think it is exactly the same, Mr. Chairman.

Mr. FRIEDEL. What bill are you reading from, the House bill or the Senate bill?

Mr. HOGE. I will read from the House bill. It is identical with the Senate bill at this point. It reads: "Any drug subject to the provisions of sections 503(b) (1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b) (1), 355, 356 and 357.)"

Mr. Chairman, 353(b) (1) is the code reference for the food and drug section, 503(b) (1), and that is the prescription drug; 355 is the code reference for new drugs. That would be 505 in the Food and Drug Act, which is not mentioned in lines 4 or 5. Section 356 is 506 in the Food and Drug Act. That is insulin. Section 357, which shows in the parenthetical citation but does not show above it, is section 507 of the Food and Drug Act which includes all antibiotic-containing drugs. So, the parentheses at this point would seem to exempt not only prescription drugs and insulin but "new drugs" and all antibiotics.

Well, the exemption should include all of those drugs. It should, in our opinion, include all drugs. For the articles and their labeling are so extensively and minutely regulated under the Federal Food, Drug, and Cosmetic Act as to leave neither need nor room for the further regulation of packaging and labeling which these bills provide.

Drugs subject to the "new drug" controls, section 505 of the Federal Food, Drug, and Cosmetic Act, or section 353(b) (1) of the code, and drugs containing antibiotics (section 507), whether sold on prescription or over the counter are strictly regulated as to packaging and labeling. The same is true with respect to antibiotics.

It is true, of course, that prescription drugs are not always displayed in consumer packages, but they are often sold in them. More frequently, prescription drugs, of course, reach the consumer under the pharmacists' labels. But they go into commerce and into the profession under the manufacturers' labels which must clear Federal controls.

And so must the labeling of "new" and antibiotic drugs whether sold on prescription or over the counter. So, they, too—unless already exempted by the parenthetical citation I just discussed—should be exempted from these added controls.

The fact is that all drugs are subject to such wide and minute control by statutes and regulations that the particular restraints sought by the subject bills are adequately assured without further drug legislation. An outline of the elaborate Federal controls presently pertaining to the packaging and labeling of drugs is hereto attached as appendix I. Unless you desire, Mr. Chairman, I will not read it. You have already said that it may be made a part of the record.

When I read over that appendix—and what that appendix is is an outline of the controls presently pertaining to the packaging and



labeling of all drugs—I see that it is not entirely complete. I have even left out a few controls. But there are plenty there to back up the statement which I just made to you, that drugs are so thoroughly regulated now as to need no further regulation in these particulars.

We, therefore, respectfully recommend that the subject bills be amended to provide that the definition of the term “consumer commodity” (sec. 10(a)) shall not include “any drug subject to the packaging and labeling requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).”

Acceptance of this amendment would remove drugs from the bill and make unnecessary the following comment. If it is not accepted, then—in the alternative—there should be clarification of section 5 (c) (4) which authorizes regulations to require information with respect to the ingredients and composition of consumer commodities. Such regulations, says the bill, shall be “consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act”; and such regulations shall not require the disclosure of information concerning “proprietary trade secrets.”

The Senate Committee Report No. 1186, dated May 25, 1966, which accompanied the bill, refers to these provisions and repeats the qualifications but does not explain or apply them. The report does specifically contemplate disclosure of proportions and percentages, for it says on page 6, in the last paragraph on the page:

Here, the committee is primarily concerned with the ability of consumers to make price comparisons among competing products with varying proportions of active or costly ingredients.

Mr. Chairman, in the early days of the hearings before this committee, Secretary Cohen, Assistant Secretary of HEW, was asked why he hadn't proposed amendments to the food and drug law instead of coming in with this bill. Mr. Cohen answered on page 195 of the transcript of those hearings:

Of course, this bill is the product of a lot of consideration. I think amendments to the Food and Drug Act are desirable and we have been stressing them. But I don't see any reason why the language in this bill, which does give increased procedural and other authority, is inconsistent. It is not inconsistent with anything in the Food and Drug Act.

I call your attention to the use of the word “inconsistent” which appears in section 5(c).

Mr. Goodrich, the Assistant General Counsel of HEW who advises the Food and Drug Administration on food and drug matters, appeared before you and at page 216, lines 2 to 5 of the transcript, said:

There is some new authority in 5(c). The principal reach of the authority is in 5(d) but I would want it clearly understood that there is some additional authority in 4 and 5(c).

It is 5(c) to which I am addressing myself now.

Well, Mr. Chairman, unless Mr. Goodrich was right in that statement, that there is additional authority at this point, then as to drugs section 5(c) (4) is simply surplusage, because the food and drug law now is very specific with respect to ingredient disclosure of drugs. Prescription drugs must show all the ingredients and the quantities or percentages. Other drugs show the active ingredients and the quantities of certain named ingredients.

So, this section, as it is in the proposed law, is meaningless as far as drugs are concerned unless further authority is contemplated for the administration.

When I prepared my statement, I said presumably, the Senate Committee on Commerce intended, by the wording of section 5(c)(4) and by the language of the report, to limit the disclosure of information respecting ingredients and composition of drugs to that disclosure determined by the Federal Food, Drug, and Cosmetic Act.

As I study it further and listen to and read some of these proceedings, I am not so sure. Maybe I should put it this way, that perhaps the Senate committee did intend by that wording and by that report, to respect the requirements of the Food and Drug Act and not to go beyond them. But now I am not so sure that the bill presented, if enacted, would do just that. I am not so sure but what it would now permit the Food and Drug Administration to go beyond the Food and Drug Act.

Our concern is that the bill or the legislative history be made clear in that respect by this committee. It is not now as clear as it should be for the future. The phrase "consistent with" may not negate the possibility of the Food and Drug Administration expanding upon the provisions of the Federal Food, Drug, and Cosmetic Act with respect to ingredient disclosure.

Definitively, "consistent with" means no more than "in harmony with," or "compatible with." I have gathered some notes from the law books which I won't prolong my statement to get into, Mr. Chairman. Black's Law Dictionary, for instance, gives the word "consistent" as meaning "not contradictory, compliable, accordant." It takes that from a case in the Oklahoma high court, 113 Oklahoma 130.

The California court defined "consistent with" to mean "in harmony with." That quote comes from *Shay v. Roth*, 64 Cal. App. 314.

The seventh circuit held that "consistent with the public interest," which was a phrase that was before it in a case under the Bankruptcy Act, was to be read as meaning "compatible with the public interest."

In a case from the ninth circuit, "consistent with the public interest" was construed to mean that the consolidation, which was then under consideration, should be "compatible with the public interest."

The Uniform Commercial Code at section 2-202, with respect to parol or extrinsic evidence would permit evidence of "consistent additional" terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Mr. Chairman, I have noted the words "proprietary trade secret" in section 5(c)(4), but we can't take much comfort in those words either. "Trade secret" is a term without exact definition or fixed application. The courts rarely try to define it in any more helpful language than that of the Restatement of Torts which at section 757 says that "an exact definition of a trade secret is not possible"; that "Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4)

the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

You see from that that what is a trade secret really involves a hearing or an adversary proceeding, almost, to determine whether what one claims to be a trade secret is—in law—one or not.

The Restatement of Torts at the point from which I read was cited with approval by the Circuit Court of Appeals for the Second Circuit in 1962 in *Speedy Chemical Products, Inc. v. Carters Ink Company*, 306 F. 2d 328, 331. As Mr. Justice Holmes said in *E. I. DuPont de Nemours Powder Company v. Masland*, 244 U.S. 100, in a typical expression of the great Justice, "The property may be denied, but the confidence cannot be."

It may be presumptuous to explain what Mr. Justice Holmes meant, but I think a few other words from the case do make it clear. Incidentally, in that case two great legal luminaries appeared, George Warton Pepper, of Philadelphia, and John G. Johnson, who was the law partner of Justice Roberts of the Supreme Court.

Mr. Justice Holmes said "The word property as applied to trademarks and trade secrets is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith. Whether the plaintiffs have any valuable secret or not, the defendant knows the facts, whatever they are, through a special confidence that he accepted."

It was at that point that he then said "The property may be denied but the confidence cannot be." Following along that line of judicial reasoning, protection of what are loosely called trade secrets is rather quasi-contractual and/or a quasi-tort enforcement of a duty of confidence as between two parties who have some specific sort of relationship to each other. The protective clause, section 5(c)(4), is founded upon a property concept definition of "trade secret" which is not established in the cases.

In the absence of an exact definition, a "trade secret" becomes a question of fact rather than of law. And one who asserts a trade secret has a difficult burden of proof. In *Sarkes Tarsian, Inc., v. Audio Devices, Inc.*, 166 F. Supp. 250 (S.D. Cal. 1958) (affirmed, 283 F. 2d 695), the court denied the existence of a trade secret alleged in the production of a silicon rectifier. The court's attempt at an exact definition of the term "trade secret" demonstrates the vagueness of the meager results of litigation:

"What is a trade secret is difficult to define. However, on the whole, it must consist of a particular form of construction of a device, a formula, method, or process that is of a character which does not occur to persons in the trade with knowledge of the state of the art or which cannot be evolved by those skilled in the art from the theoretical description of the process, or compilation or compendia of information or knowledge" (257-258).

Further case references are hereto attached as appendix II.

What we ask is that—if drugs are not excluded—the bill and the legislative history expressly preserve the integrity of section 502(e) of the Federal Food, Drug, and Cosmetic Act. That section requires the label of over-the-counter drugs to declare the names of the active

ingredients of the article and the names and quantities of certain named ingredients such as alcohol, bromides, ether, chloroform, etc. As to ingredients other than those specifically named, the quantities or proportions are not required and even the names of inactive substances need not be disclosed.

Section 502(e) thus recognizes that the proprietary interest in over-the-counter drugs is often related to the therapeutically inactive ingredients. Those ingredients have an important part in the manufacture of an end product that will accomplish its intended purpose and appeal to the consumer.

Much depends on the characteristics and degrees of both the active and inactive ingredients; quality, viscosity, solubility, particle size, source, coloring, and flavoring agents; also the nature and identity of the vehicle, binders, fillers, and excipients.

These are things in the proprietary industry that go into the niceties of manufacture and make for what is often referred to as "pharmaceutical elegance." They definitely contribute to commercial success and therapeutic effectiveness. They are essential elements of competition in the proprietary industry.

Section 502(e) has recognized them as such since 1938. The manufacturer considers them to be his "proprietary trade secrets," but he needs assurance that—if these bills become law—the FDA and the courts will concur.

Accordingly, we ask that it be made clear that section 5(c)(4) of the bills does not contemplate the disclosure of "ingredient" and "composition" information of this type.

The conclusion of the matter is—as stated at the outset—that the packaging and labeling of drug products are so thoroughly regulated now that this additional legislation is not necessary as to them. The existing regulation is fitted to the nature of drugs and to the circumstances pertaining to the making and marketing of them. The pattern of it should not be altered or complicated by administrative regulations made pursuant to other laws.

If, as may be asserted, these bills are, to some extent, of the same or similar subject matter as the existing law, then to that extent they merely duplicate or superimpose similar regulation. And the question persists whether or not the proposed legislation is necessary with respect to drugs.

That question is lighted up by the principle that laws should be enacted only on the basis of substantial public interest and demonstrable need. In all the hearings in the Senate, there was no showing of any inadequacy of the drug provisions of the Food, Drug, and Cosmetic Act to deal with the practices to which these bills are directed. Nor, is there anything on the subject in two very comprehensive bills now pending before this committee to amend the Food and Drug Act, H.R. 13885 and H.R. 13886, the latter of which has already been under hearings by the Subcommittee on Public Health and Welfare.

In the Senate, drugs were conspicuous by their absence in the discussion of so-called abuses to which this legislation was addressed.

Therefore, Mr. Chairman, I respectfully request that drugs be excluded from the application of H.R. 15440 and S. 985, and related bills.

Thank you.

(The appendixes referred to follow :)

# APPENDIX I

## OUTLINE OF PRINCIPAL FEDERAL CONTROLS PRESENTLY PERTAINING TO PACKAGING AND LABELING OF DRUGS

1. The definition of terms in Sec. 201 of the Federal Food, Drug and Cosmetic Act are broad and elastic:

(a) "Drug" means, among other things, articles used in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.

(b) "Label" means matter displayed on the immediate container.

(c) "Labeling" means matter accompanying the article.

(d) "Misbranding" includes not only representations expressly made but the failure of labeling to reveal facts material in the light of representations contained in the labeling or material with respect to consequences which may result from use of the labeled article under the conditions of use stated or under such conditions as are customary.

2. The elements of misbranding are comprehensive and the requirements are broad and precise.

(a) Labeling must not be "false or misleading in any particular." (Sec. 502(a))

(b) The package must bear a label containing the name and place of business of the manufacturer, packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count. (Sec. 502(b))

Elaborate regulations, going into much detail, affect label compliance with the statutory provisions. (21 CFR 1.102)

(c) Information on labels and in labeling must be prominently placed "with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use." (Sec. 502(c))

Elaborate regulations, going into much detail, affect label compliance with the statutory provisions. (21 CFR 1.103)

(d) The label must bear the "established name" of the drug and, if it consists of two or more ingredients, the established name (and in some cases the quantity) of active ingredients. (Sec. 502(e))

Elaborate regulations, going into much detail, affect label compliance with the statutory provisions. (21 CFR 1.105)

(e) If it is a drug the name of which is recognized in an official compendium, it must be packaged and labeled as prescribed in the compendium. (Sec. 502(g))

(f) If a drug has been found by the Secretary to be liable to deterioration, it must be packaged in such form and manner, and its label bear such precautions as the Secretary shall by regulation require as necessary for the protection of the public health. (Sec. 502(h))

(g) The container must not be "so made, formed or filled as to be misleading"; the drug must not be an imitation of another drug; it must not be offered for sale under the name of another drug. (Sec. 502(i))

(h) Under the "Drug Abuse Control Amendments of 1965," it must not be a "counterfeit drug" which is defined (Sec. 201(g)(2)):

"The term 'counterfeit drug' means a drug which, or the container or labeling of which, without authorization, bears the trademark, tradename, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who is fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor."

(i) All depressant and stimulant drugs subject to the "Drug Abuse Control Amendments of 1965" (Sec. 511) must bear prominently on the principal panel of the label the following symbol or modifications:

(j) The advertising and labeling of prescription drugs pursuant to the 1962 Amendments, must contain the established name "printed prominently and in type at least half as large as that used for any trade or brand name thereof,"

the ingredients and "such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations." (Sec. 502(n))

(k) A drug which is not safe for use other than on prescription must be labeled "Caution: Federal law prohibits dispensing without prescription." (Sec. 503(b)(4))

(l) Regulations require, when appropriate, such statements as "For prescription compounding"; "Caution: For manufacturing, processing or repackaging"; "For investigational use"; "Diagnostic reagent—For professional use only." (21 CFR 1.106(j), (k), (l))

3. Packaging and labeling are subject to review and approval under the provisions of Sec. 505 as to "new drugs." The Act provides for the submission of labeling material and the regulations make detailed requirements (21 CFR 130, et seq.).

4. Sec. 507 requires certification of antibiotics and extensive regulations prescribe numerous labeling and packaging requirements (21 CFR 141 et seq.).

5. Sec. 510 requires registration for the manufacture, processing or repackaging of drugs and requires factory inspection at least once every two years.

6. Sec. 704 provides for inspection of factories including the materials therein and the labeling pertaining to them.

7. Sec. 801 forbids importation of any drug article which is misbranded. It permits exportation when labeled on the outside of the shipping package to show that it is intended for export.

## APPENDIX II

### CASES ON "TRADE SECRETS"

Regardless of the lack of substantial definition of the term, "trade secret" has been used extensively in statutory limitation upon the publication of Federal inquiries. However, research has uncovered no case where the term was applied to the ingredients or composition of goods, disclosure of which would have been harmful to the manufacturer. The point has not been contested.

15 U.S.C.A. § 46 gives the Federal Trade Commission power to make public information it obtains under the Act, except trade secrets, etc. The only case defining the term under this section is *Federal Trade Commission v. Tuttle*, 244 F. 2d 605 (2nd Cir., 1957). Defendant, Tuttle, alleged both that its sales records were trade secrets and that as such, they were within the exceptions of the Act. The court agreed without defining "trade secret", but held that the statute permitted the subpoenaing of trade secret information by the Commission.

15 U.S.C.A. § 78a explicitly deprives the Securities and Exchange Commission of the power to require the revealing of trade secrets or "processes" in any application, report, etc. Language in the case of *American Sumatra Tobacco Corp. v. Securities and Exchange Commission*, 93 F. 2d 236 (App. D.C. 1938) and 110 F. 2d 117 (App. D.C., 1940), allows a great deal of discretion in the power of the Commission to "weigh the respective equities" as to whether the disclosure will "more likely result in harm to the registrant than in benefit to the public." However, that broad language has to do with the lists of gross sales and cost of goods sold which were submitted by the corporation, not the contents of the goods themselves. Otherwise, the case is void of a definition of "trade secret".

15 U.S.C.A. § 1263 refers to the labeling of "Hazardous Substances" and prohibits the private use, to one's own advantage, of any information acquired by the Department of Commerce concerning "any method or process which as a trade secret is entitled to protection." There have been no cases on point under this statute.

Finally, the Federal Criminal Code (18 U.S.C.A. § 1905) prohibits the disclosure of confidential matter, including trade secrets, by public officers and employees. The case of *United States ex rel. Norwegian Nitrogen Products Co., Inc., v. United States Tariff Commission*, 6 F. 2d 491 (App. D.C. 1925), defined trade secret as follows: "... an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities." (at 495) However, the plaintiff in the case did not even claim that the subject of the case, the publication of the costs of production, involved a trade secret, so the discussion is pure dicta.

In total, the past inclusion of the term "trade secret" in the laws of the United States does not fully establish it for the purposes of these bills.

Mr. ROGERS of Texas (presiding). Thank you, very much, for your statement, Mr. Hoge.

Mr. Rogers, have you any questions?

Mr. ROGERS of Florida. In the Senate bill, prescription drugs are excluded. Why, under the present law, would there be any more control needed over the other drugs under the present law, since the comparison is made between prescription and other drugs?

Mr. HOGG. Mr. Rogers, the suggestion was made when the bill was in the Senate that prescription drugs were frequently sold under the druggists' label, the manufacturers' having been taken off, so that the prescription drug therefore was not on display on the counter where the consumer was to see it.

Of course, that is quite true. Most of the time perhaps that is it. But prescription drugs can be and are frequently sold in the manufacturer's package, and certainly they are shipped in interstate commerce in the manufacturer's package.

Mr. ROGERS of Florida. Do prescription drugs have to have all of the ingredients?

Mr. HOGG. Yes, sir; they have to have all of the ingredients and the percentages, too.

Mr. ROGERS of Florida. This is not required with over-the-counter drugs?

Mr. HOGG. No, sir. With respect to drugs other than prescription drugs, we are required to state the active ingredients and the proportions of some 10 or 11 named ingredients, alcohol, bromides, and so forth.

Mr. ROGERS of Florida. The testimony that we heard was that this proposed bill was to go to confusion, not necessarily to deception, which is covered under the law, or misleading, which is covered under the law, but to confusion, so that the housewife would not be confused.

For instance, on a cents-off sale, are any of these drugs that are not prescription drugs packaged or sold for cents-off sales?

Mr. HOGG. There are some that are. I think they are the exception, Congressman Rogers. It does occur sometimes, yes.

Mr. ROGERS of Florida. That is all. Thank you.

Mr. ROGERS of Texas. Mr. Devine?

Mr. DEVINE. I have no questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Gilligan, have you any questions?

Mr. GILLIGAN. No, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I note that your testimony concerns itself with adequacy of protection of the public as to pharmaceutical supplies and supplies of proprietary items. It seems to me that the sales pitch on this truth in packaging bill is that the public should have an opportunity for price comparison.

We will say that a bottle of aspirin is put up in a bottle that appeared to be greater in size than a standard bottle, so the public, by virtue of the size of the bottle, assumes they are getting more than in any other package.

This seems to be the objective of this bill to regulate packaging for price comparison. In what way would this bill interfere with your industry in that area?

Mr. HOGE. It probably would not interfere in that area. I would like to say this: One of our chief troubles with this bill, sir, is that we don't know at all the points at which it will apply to us and just how it will, because all of this is to be done by regulations made from time to time; whereas, now the law is pretty well set as to what we must do in these respects.

Most of the regulations now applicable to us in the area of the bills under discussion are what are called interpretative regulations. The food and drug law since it was passed in 1938 has had a very strict provision that a drug will be misbranded if the package is so made, formed, or filled as to be misleading. I can tell you—and I was here when the law as passed—that when the law was put into application, almost every drug represented by packages on the shelf went through a complete repackaging job in order to comply with this provision of the law.

Mr. NELSEN. You state in your testimony you are in favor of the objectives of this bill but you feel that the industry that you represent should not be included in its application. It would seem to me that since other phases of our domestic economy are affected by this bill and that since you feel its application would be disastrous to your industry, you should likewise be concerned whether or not its application would be disastrous to other phases in our economy.

Would you care to comment on this observation?

Mr. HOGE. I don't want to go beyond my qualifications such as they may be. My appearance here is for an association of drug manufacturers. I have wondered, sir, as I have watched this thing go on now for the last several years, and have read the press comments and reports of the hearings, just how great the need was for so drastic a piece of legislation.

With respect to drugs, let me say this: You used the term disastrous. I am not prepared to say that it would be disastrous to us. I repeat what I said a moment ago, that I don't know exactly what it would do to us. That is part of my concern, and particularly with respect to section 5(c)(4) which I was talking about, where our law is so specific now as to what we have to do, and where it is apparent from the record that additional authority is considered vested by that section.

I am uneasy as to what it is going to do. I can't use the word "disastrous." I can say that there would be more inconvenience and probably more expense in complying with it. Every law involves expense and inconvenience in complying with it.

Mr. NELSEN. I am in complete agreement that the Food and Drug Administration has adequate authority. My point is that if this bill is bad as far as giving the public a facility of price comparison as far as the food and drug articles are concerned and if it is bad for them, it could be bad for other people.

I want to be sure that we look at this not from just individual segments of our domestic economy, but all of them. In my judgment, the greatest mislabel here is the way this bill has been presented because the great bulk of the arguments that have been presented in



this hearing have been presented in a manner that would lead the public to believe that there is no protection in the areas that are adequately protected under existing law.

The bill goes very far as far as penalty provisions are concerned. It seems to me that industry is put in a position of being guilty until they prove themselves innocent. The great free enterprise system that has worked so well in our country is going to be hampered because of it.

I hope you will join with everyone else in a concern over the total application of this measure.

Mr. HOGE. I do join, Mr. Nelsen, but I think I ought to say this. I don't think I ought to try to work my own clients out by working anybody else in.

Mr. NELSEN. I think I understand your point.

Mr. HOGE. I am not as conversant with the problems of the other industries as I may be with the drug industry. I think I will also say this, because this is about as real as it can be: the drug industry is now on a rising tide of regulation. Every day brings a new bill or bills, new hearings.

Your distinguished chairman has introduced two very sizable bills, H.R. 13885 and H.R. 13886. Those two bills, if enacted in the condition they are in now, would completely re-do the labeling of all drug products.

The new drug provisions are, in effect, licensing. I don't like licensing. I think it is better to state the obligations and then hold a man liable under certain sanctions for complying with them. But there are exceptions to every rule, of course. We have acceded to the exception that for new drugs there should be a form of licensing. We have subscribed to it, since 1938. There are other areas in which we have to make exceptions to the rule. But the result of all of this is that the drug industry today is so completely regulated—and on our horizon are these bills for still further regulation—that every company will have to have a staff of lawyers, doctors, and chemists to keep up with the regulations as they change from day to day.

The code requires two volumes about 3 inches thick just to hold the regulations which now pertain to food and drugs. This bill would mean another set of regulations because this bill would be effectuated entirely by regulations made from time to time.

Mr. NELSEN. I compliment the gentleman for his fine presentation relative to the people he represents. I will be equally diligent in my concern over butter.

Thank you.

Mr. ROGERS of Texas. Mr. Adams.

Mr. ADAMS. Mr. Hope, I hope you will bear with us since it is difficult to keep moving from section to section in the code in order to keep track of the various industry proposals. Your amendment proposed on page 3 would take in all of title 21, United States Code, section 301, as opposed to simply allowing an exemption for those drugs which are subject to title 21, United States Code, section 351 et seq., which is the actual drug and device control section. Isn't that true?

Mr. HOGE. If you make a point of that, I will accept 351.

Mr. ADAMS. That is what I want to ask you about. I want to make this clear. I want this to go into the record and then perhaps you can

help correct your amendment. Maybe we should adopt it, but I will ask the Department to come up with what they say, too.

If you bring in 301 et seq., then you bring in the definition of the term "drug," and the term "drug" under 321(g) says:

"The term 'drug' means (1) articles recognized in the official United States Pharmacopoeia, Official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clauses (1), (2), or (3) of this subsection; but does not include devices or their components, parts, or accessories."

That is a very broad definition of drug, and I don't think you want to write that exemption into this statute.

Mr. HOGE. You accepted that in the bills before you. That is the definition in your bills.

Mr. ADAMS. That is the definition of the exemption. I am talking about the definition of a drug. I agree that this is all right as a definition of a drug. But the exemption you are proposing would be that we would use this type of a definitional exemption, I wanted to rather have your industry, because you are skilled in this, and perhaps the Department, pick out the sections in subchapter IV, which is 321 et seq., that you feel are necessary to establish a proper exemption.

I agree with you that there may be some confusion because section 503(b) (1) and 506, at least as I read them, would not cover section 357, which is the new penicillin, streptomycin, the so-called antibiotics.

I think that if you want to propose how this might be corrected, the committee would certainly consider it.

Mr. HOGE. Mr. Adams, I hope you haven't misunderstood me. The citation I put, 301, is the approved way of citing the Food and Drug Act in its entirety.

Mr. ADAMS. I agree.

Mr. HOGE. My point was that drugs which are subject to the Food, Drug, and Cosmetic Act should be exempted from these bills. Your first sentence, I think, related probably to the adulteration and misbranding sections of the act as they apply to drugs.

Mr. ADAMS. No, the first section that I read to you is the definitional section of a "drug," and therefore, if we were to say any drug subject to packaging and labeling requirements of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, we would carry with it in that exemption this definition of a "drug" and we would exempt—or the courts could so interpret—under the definitional section as well as under the actual regulating section.

Mr. HOGE. I don't know how we can get at it, Mr. Adams. If you are going to exempt a drug, you have to define a drug. Your bill defines a drug.

Mr. ADAMS. Then I would suggest that you go to the provisions of subchapter V, starting at section 351, and pick out in those sections the actual labeling and packaging sections. It perhaps has not been done in the bill. I think there was an attempt on page 15, in section 3 of

the bill to do that. I gather from your testimony that you may or may not be satisfied that this does the job.

What I am saying to you is I don't think we should accept what you have proposed, but I do think there may be something you can propose under those sections that will cure your problem. I could suggest for example, why don't you say, "We will use section 352, which is misbranded drugs and devices for an exemption," in other words, you could use this labeling section, which perhaps would give you coverage as adequate as your suggested amendment?

Mr. HOGE. I would have no objection to that.

Mr. ADAMS. What I am asking you is not give or withhold an objection, but to give us your help.

Mr. HOGE. I would be happy to help, too.

Mr. ADAMS. In other words, you have spent many years, obviously, in this field, so I would assume that you and your cocounsel could draft a proposed amendment with the proper sections in it that you believe would handle the problem without moving too widely.

Mr. HOGE. Mr. Adams, I would be delighted to try. I have had the pleasure of many years of working with Mr. Borchardt, who is sitting at the end of the table. I would be delighted to try. You will find my appendix I includes the definition which you just read, which is the definition from the law. Then you will also see that I tried to extract the labeling requirements pertaining to drugs. As I said, although I thought I had all of them, I missed two of the most important ones. I missed the requirements that we must have adequate warnings generally and warnings for habit-forming drugs specifically (secs. 502 (b) and (d)).

Mr. ADAMS. That is why I wanted you to do it rather than our doing it.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Curtin.

Mr. CURTIN. I have no questions.

Mr. ROGERS of Texas. Mr. Broyhill.

Mr. BROYHILL. Mr. Hoge, you mentioned briefly that there was other pending legislation before the Congress which would tend to complicate this whole area. Briefly, I think you said that the members should look at this closely, as to what effect this legislation will have in relation to the pending legislation. Would you want to comment more on this problem?

Mr. HOGE. Mr. Broyhill, the other bills that are pending would not touch the subject matter of the bills under present discussion. I made the point that the other bills, as vast as they are, do not deal with any supposed derelictions of the drug industry in the areas that the bills before you now are addressed to, my point being that if there has been any need for new laws pertaining to drugs in these fields, I would have thought that these very comprehensive bills that have now been introduced would have touched upon them.

But they are absolutely silent; not a word in them. They are H.R. 13884, having to do with cooperation between Federal and State bodies in the enforcement of State and Federal drug laws, a very good bill—we have no opposition to it whatever—and H.R. 13885, called the drug safety bill, which would deal with a great number of subjects.

It would require records and reports not only of drugs which are under the new-drug sections but of all drugs—reports of side effects, contraindications, and everything pertaining to the use of them. It would require certification of all drugs—not just antibiotics, as the law now is, but certification of all drugs if the Secretary thought that the public interest would be served by doing that. It and, yet another bill—H.R. 13886—would rewrite the labeling provisions of section 502(f) completely; would give FDA the authority to prescribe in the greatest, most minute detail everything that should be put on packages and everything that shouldn't.

**Mr. BROYHILL.** Let me break in right there. What you are saying is that there is a possibility of conflict between this proposed legislation and this legislation?

**Mr. HOGE.** I don't know whether it is conflict, Mr. Broyhill, or whether it is just multiplication of regulation. Out of multiplication I suppose we will get conflict, incompatibility, and inconsistencies of all kinds.

May I just say at this point that if there is anything wrong with the food and drug law with respect to the matters dealt with by these bills, it would be far more sensible to propose yet another amendment to the Food and Drug Act addressed specifically to what is considered the evil at that point, rather than put drug people under this new, broad, regulatory control which has to do with price comparison, sales promotion, and that sort of thing.

We are governed by laws primarily relating to health. The Food and Drug Act as it applies to us is an economic act, it is true. It is embraced in the broad field of unfair competition. But primarily and predominantly it is the health of the people that it is directed to. The bills now before you are directed primarily, avowedly, to price comparisons.

**Mr. BROYHILL.** Thank you, very much.

**Mr. ROGERS of Texas.** Thank you.

Thank you, Mr. Hoge, for your statement.

It appears to be close to noon and we have legislation coming up on the floor of the House this afternoon. Therefore, the committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 11:50 a.m., the committee recessed to reconvene at 10 a.m., Thursday, August 18, 1966.)

## FAIR PACKAGING AND LABELING

THURSDAY, AUGUST 18, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The subject today is the continuation of fair packaging and labeling bills, H.R. 15440 and related bills.

Our first witness this morning will be Mr. Edward J. Hekman of Keebler Co., Elmhurst, Ill.

Come forward and take a chair, please. I don't know how long your statement is, Mr. Hekman, but I am just wondering if you can insert it in the record and summarize it.

Would that be possible, or do you care to read it?

### STATEMENT OF EDWARD J. HEKMAN, PRESIDENT, KEEBLER CO., ELMHURST, ILL.

Mr. HEKMAN. I have some markings on the paper, Mr. Chairman, and I will shorten it.

The CHAIRMAN. Fine, thank you.

You may proceed.

(Mr. Hekman's full statement follows:)

#### STATEMENT OF EDWARD J. HEKMAN, PRESIDENT, KEEBLER CO.

Gentleman, my name is Edward J. Hekman, President of Keebler Company with headquarters in Elmhurst, Illinois. Keebler, which was known as United Biscuit Company of America until a few months ago, markets its products, principally cookies and crackers, in 43 states. It may be better known to some members of your committee under such regional brand names as Strietmann, Hekman and Supreme.

On behalf of Keebler Company and myself, I want to thank you for this opportunity to voice our concern over pending packaging legislation. We sincerely fear this legislation would ultimately hurt the consumer through higher prices and a reduced variety of wanted products. It will certainly also affect our Company, its 6,500 shareholders and 6,700 employees.

We believe the proposed legislation will raise prices of our products with no increase in value, will force us to drop products from our present lines and will seriously limit our ability to develop and market new products. This can only mean lowered employment among our 6,700 employees and reduced earnings for our 1,500 sales people.

Our Company, with sales last year of approximately \$138,000,000, is actually small in comparison with the total food industry, which is the nation's largest business. Our Company accounts for about 15 per cent of the nation's cookie

and cracker business. Our net earnings last year amounted to less than two cents on a dollar of sales; it should be obvious that any increased costs due to this legislation would have to be reflected in higher prices to consumers.

Although we have employees in 43 states, most of our employment is concentrated in the states where we have large bakeries. Keebler's major bakeries—some of them still known better by their historic names of Strietmann, Hekman and Bowman—are in Cincinnati, Ohio; Macon, Georgia; Grand Rapids, Michigan; Philadelphia, Pennsylvania; and Denver, Colorado. In addition, we have a cone bakery in Chicago, Illinois; a specialty bakery in Michigan City, Indiana; and a candy plant in Greenville, South Carolina.

Lest there be any misunderstanding, I want to say publicly that I assume that all those who have introduced and supported packaging legislation are motivated by a sincere concern for the consumer. In turn, I must ask those who have supported this legislation to assume that those of us in the food industry who have opposed this legislation are not on the side of deception.

Unfortunately, through the popular use of the phrase, "Truth in Packaging" to describe this proposed legislation, those of us who oppose the bills under study are cast in the role not only of plotters but even as masters of deceit.

I assure you that I personally, as well as others in my Company and in our industry, and hosts of others in the food business, have supported legislation which is aimed at making deception illegal.

I know of no responsible executive in the food industry, and I know hundreds, who does not feel that deception is immoral. Despite these convictions, however, I realize there still would be a major problem if there remained a constant temptation to deceive the public. Those who may assume that such a temptation exists overlook the fact that in the food business, perhaps more so than in any other, deception is not good business. The food business depends on repeat purchases; nothing would destroy a company like ours more quickly than deception of the consumer on whom we depend for tomorrow's sales. Consumer confidence in the integrity of a food company is not just something nice to have; it is absolutely essential; it is priceless.

Very candidly, I am puzzled by the inclusion of many of the provisions of both S-985 and HR-15440. Although I am not a lawyer, the provision of the Federal Trade Commission Act prohibiting all "unfair deceptive acts or practices" seems clear enough even for a layman.

As a businessman, moreover, I submit that legislation that duplicates and overlaps other legislation is costly to business, principally in causing delays. Any measures which unnecessarily increase costs ultimately mean higher prices with no increase in value for consumers.

Meeting the consumer's needs and wants, gentlemen, is our business. How well we do meet them determines our success.

Just because that is our business, we in our Company and our competitors in theirs are tuned in to the consumer in a way in which, I respectfully submit, no agency of government could ever be.

In our Company, for example, we do extensive market research and make numerous consumer surveys, and there are hundreds of food companies who are likewise spending as much as they can afford to determine what consumers need and want.

Even more important, I think, is the unsolicited communication from the consumer.

There are at least two reasons why I have always taken a direct, personal interest in what consumers tell us.

The first is that I do not recall the time when the importance of pleasing the consumer was not being drilled into me.

While still a young boy my father would translate for me from the Holland language the maxims of my grandfather who entered the baking business in this country in the kitchen of a rented house in Grand Rapids, Michigan. My grandfather peddled his cookies from house to house and built his business by listening to what the housewives said about his products. In later years, I tagged along with my father into grocery stores, for wherever we went as a family we always stopped to visit with the grocers on the way to find out what they and their customers were saying.

A second reason for my personal interest in knowing what the customer need and wants, is that my first job with this Company 31 years ago was as a salesman going from store to store. The years I spent as a salesman, living on the

commissions I made on my sales, taught me the importance of repeat sales and the importance of finding out what the consumer demands.

I have injected these personal references to explain why I still take an intense personal interest in all consumer comments and suggestions. Our 1,200 salesmen and 300 sales supervisors are expected to report all comments and suggestions which are compiled into a weekly report which I never fail to read. I visit buying offices—not to sell, but to listen. Like my father, I too stop in at grocery stores and ask questions. Every letter with comments and suggestions which I receive—and many do address their letters to the company president—I answer personally.

In a way of speaking, we in business are as responsive to our constituents as you are to yours.

But this is amazing—in all my 31 years with this Company, in all the mass of information I have received directly or indirectly from consumers, I have received one communication indicating that they want our Company to move in the direction in which it could be compelled to move under the provisions of this Bill. The one exception was an anonymous postcard I received after testifying before the Senate Commerce Committee in 1965 on S. 985. The postcard simply said the sender supported the Hart Bill.

What does the consumer want?

The publicity given to those who have spoken in behalf of this legislation would indicate the primary purpose of the bill is to remove the "confusion" that faces the shopper in the supermarket. Much has been said about the 8,000 items in a typical store. Standardized weights and quantities in which products may be sold is the provision which has perhaps received the most publicity.

(From some of the publicity I have read, the principal purpose of the proposed legislation seems to deal with the reported 71 sizes in which potato chips are sold. If any of you is tempted to vote for this bill because of potato chips, I suggest you visit a typical super market and see for yourself first-hand what is involved and whether the selection available is reasonable.)

The consumer wants reasonable prices, and do not underestimate her ability to judge prices. Even very minor adjustments are immediately reflected in sales results. While I cannot for competitive reasons cite specific examples, I can assure you that often in our experience a very modest increase in the price of a product has resulted in a net loss in sales dollars. The typical shopper is an astute judge of values.

However, we also know that price is just one of the factors that determine her purchases.

To illustrate the point, I have brought with me five of our products, purchased in a retail store with the retail prices plainly marked.

Our Chocolate Fudge Sandwich cookie is a pound package which retailed at 39 cents in the store in the Chicago area where the package I have was purchased.

By comparison, here is another one of our sandwich cookie products, Lemon Creme Sandwiches, also retailing at 39 cents, but containing 20 ounces, or 25 per cent more product for the money. Obviously, if price comparison were the primary aim of the shopper, the 20-ounce package would far outsell the 16-ounce package at the same price.

Yet, the more expensive product outsells the less-expensive product by almost four to one.

To illustrate the point further, I have with me a 24-ounce package of Empire Sandwich cookies, which retailed in this store at 49 cents. Note this contains 50 per cent more product than the Chocolate Fudge Sandwich by weight and the cost of the package is less than 25 per cent more. If the consumer were primarily interested in price, the Empire Sandwich should far outsell the Chocolate Fudge Sandwich cookies. Yet, in the marketplace, the consumers buy almost three times as many of the product which is obviously more expensive.

There is a simple explanation for this; these products are purchased not only on the basis of price but on other factors as well. Flavor and personal taste appeal, and the desire to please the family with variety and with products the family likes are also taken into consideration by the consumer. Price, obviously is just one factor in the consumer's total concept of value.

Even more convincing of this point, I believe, is the fact that the largest selling sandwich cookie in America, made by one of our competitors, is higher priced than any of the three I have shown you.

Another aspect of price comparison is illustrated by these two packages of our Zesta Saltine crackers. Product protection in the two-pound package is just

as much as in the one-pound package. The one-pound package, however, based on our prices to the grocery stores, costs about 10 per cent more on a weight basis than the two-pound package. For a very definite and simple reason—convenience—the one-pound package outsells the two-pound package on a dollar basis of about seven to one, and on a unit basis about 14 to one.

Rational price comparison is easy and the price differential is obvious. No law is needed to "protect" anybody, and the fallacy of assuming that standardized weights would result in savings *per se* to the average household should be readily apparent. The consumer is interested in more than price; in this case, convenience in the cupboard.

Whereas those who support this bill talk primarily of price comparison, the typical housewife is more interested in what I would call "total value"—made up of many things.

I would dare say that the books you buy and the magazines to which you subscribe are really no different as buying decisions than those faced by the shopper in the grocery store. None of you, I submit, would suggest that books should be published in certain multiples of pages or that magazines should be printed in uniform dimensions with standardized column inches of editorial copy for easy price comparison. While price is one consideration in buying a book or subscribing to a magazine, for you as well as for the housewife, it is but one of many considerations.

The choices in the grocery store were not imposed on consumers; this variety was, and is, dictated by consumers. As a casual chat with any grocery buyer would prove to you, no product gets on the shelf unless there is a reasonable belief that it will be in demand; if the demand does not materialize, the product is removed. This demand, very obviously, comes from the consumer. The shopper dictates the number of choices she wants. If the store she visits does not have what she wants, she will shift her buying to the store that does.

This almost endless variety of choices has been under attack by many who support the proposed legislation. There are those who feel that the consumers who have dictated this multitude of choices somehow do not know what is good for them.

By coincidence, when I entered this business in 1935 the revolution in grocery marketing was just beginning. At that time the consumer had relatively few choices. In the cookie and cracker business at that time it was not unusual for a store to carry the products of only one baker and to carry not more than a dozen or two of his products in the little glass-covered boxes that many of you may remember.

With the vast increase in the variety available as stores became bigger and bigger, something else happened. The competition for space on the shelves became keener. It is no coincidence that this change in marketing of grocery products spurred a comparable revolution with the companies that manufacture food products. Innovation, convenience, protection, quality control and, yes, price competition have been stimulated to a degree which I for one never dreamed of when I became a cookie and cracker salesman 31 years ago. With all the vast forward strides that have been made, including doing for the housewife what she once had to do herself in food preparation, the percentage of the spendable dollar required for food has steadily gone down.

This intense competition has also brought about a built-in protection for the consumer against even unintended deception. A major food company today must be prepared to submit its products to the scrutiny of scores of sophisticated buying specialists in store headquarters across the country.

At the outset of my testimony I indicated that we in our industry fear this legislation because we believe it will result in higher prices with no increase in value, a reduced variety of products for consumers lower sales and reduced employment.

This fear stems from the provisions of HR-15440 to authorize standardization of package sizes, shapes and dimensions and the provisions of S-985 which I interpret to say that industry may be compelled to "voluntarily" standardize weights and sizes.

Approximately two-thirds of the sales of Keebler Company are generated by products which are packaged in multiples of quarter-pounds. However, these products, accounting for two-thirds of our sales, comprise less than half the items we market.



It is the remaining one-third of our sales accounted for by more than half the products we sell about which we are concerned and which would be jeopardized by either mandatory or compulsory-voluntary standardization.

Any measures which may be taken to enforce standardization on these items would result in any one of the following alternatives:

1. Installation of new equipment and additions to bakeries to accommodate the equipment, with both building and equipment used at a fraction of the capacity, thereby increasing the price of products.
2. Discontinuing all products with sales volume which could not reasonably justify additional equipment and space.
3. Altering the quality of products to meet a standardized weight.
4. Fewer product and packaging innovations.

Higher prices, discontinued items, altered quality, and fewer product and packaging innovations—all would result in lower sales and lower employment. None of these would benefit the consumer.

Moreover, all would result in substantially less competition in the food industry. The ability to cope with package standardization, by whatever method it might be imposed, is directly related to the size of the business. I am baffled by the fact that some legislators who are concerned about the bigness of some businesses have found it reasonable to support at the same time legislation which would make the chances of survival for smaller businesses difficult or even impossible.

I have cited four alternatives which would result from standardization of weights and quantities in which products are sold. These alternatives, which will hurt our employees and the consumers of our products as well as our Company itself, are easy to document from our company experience.

*First, increases in prices because of the installation of new equipment and building additions which would be used under capacity.*

Two days ago, our Company introduced to consumers a line of six new snack crackers. Different regional brand names appear on the samples shown here since we are introducing at the outset no more than three varieties in each of our nine sales regions.

Of the six, two are packed with eight ounces of product; three with seven and one-half ounces and one with seven and one-quarter ounces. The packaging machinery required to pack these items represents an investment of approximately half a million dollars, not including bakery space required for the equipment. All six of these sell at the same price.

These six packages are being produced in our Cincinnati bakery, where the equipment required had been used at less than full capacity in producing five other products in our line.

Very obviously any legislation, either by decree or by imposing so-called voluntary standards involving the production of these items in quarter-pound multiples would mean that only two of the six items could be produced on existing equipment. In addition to the building expansion which would be required, the remaining four would require an expenditure of at least one million dollars in equipment alone. Significantly, instead of enabling us to use our equipment more efficiently, the new equipment would be underused and the cost would have to be added to the selling price of our product. This is but one example of many which I could cite in which any standardization, regardless of how imposed, would be reflected in increased cost of product with no increase in value to the consumer.

In introducing these six new items we are making a deliberate attempt to capture some of the market for snack crackers in which our major competitor now holds a substantial share of total sales.

Here are some samples of these competitive items. You will note that the packages are somewhat different in size, and that the weights on the packages are somewhat different than ours. I am confident that the packaging lines for these competitive products are comparable to the half-million-dollar cost for our packaging line.

By comparison with the provision of HR-15440 which would allow for mandatory regulation of weights and quantities, the provision of S-985 for voluntary industry agreement on a compulsory standard of weights and quantities sounds rather reasonable.

Yes, the "voluntary" approach to mandatory standardization of weights and quantities sounds reasonable until one confronts the practical problems of how

competitors could really and equitably reach agreement "voluntarily" on whose packaging would prevail. With the packaging of just two competitors among dozens, almost impossible problems of reaching agreement are apparent. Regardless of whose packaging size would be made mandatory, or if neither, the only consequence which could result would be substantially higher costs which ultimately would have to be paid by the consumer with no increase in value.

*Second, another alternative would be to discontinue those products with sales volume which could not reasonably justify additional equipment and space.*

I have here our one-pound carton of graham crackers, which in terms of packaging equipment also involves several hundred thousand dollars of investment.

Because we have this equipment on hand, we have been able to use it to produce a product which I hope none of you is required to use. It is this—a completely salt-free cracker, the only one to my knowledge marketed through retail stores.

I assure you that unless you are required to have a completely salt-free diet, you would not willingly choose this product.

The lack of salt in this product affects more than taste, however. Salt is an important ingredient in controlling the dimensions of a cracker. Because this product is completely salt-free, it is possible to pack only 13 ounces in the same size carton using the graham-cracker packaging equipment.

Any standardization requiring us to pack this product in either 12-ounce or 1-pound packages would force us to withdraw this product from the marketplace. Standardization of packaging sizes would unquestionably be enhanced by reducing by one the variety available to the consumer. Who would benefit? Nobody. Who would be deprived of a product both needed and wanted? Many.

*Third, another alternative would be to alter the quality of products to make them fit standardized sizes.*

One of our popular products is known as Caramel Cremes. It has a weight of 12 and one-half ounces.

From the consumer's point of view, I am sure the weight of this package is compared with others at an even 12 ounces. Like many other products in our line, this product is packed at an unusual weight because the quality of the cookie we wanted determined the final weight in the packaging equipment available.

As any experienced baker can tell, if quality is not paramount, weights can be juggled at will.

The same is true with another popular item in our line—our Deluxe Graham's. These are packed at 14 and one-half ounces. Despite the competition of many comparable competitive products, we are continuing to enjoy a steady sales growth on this product. We believe this success is due to one fact alone—quality of the product determined the finished weight.

As with the Caramel Cremes, so with Deluxe Graham's, if quality became a secondary consideration, it would be possible to reduce the weight of the same size package to 12 ounces. As I indicated, weights can be juggled, but the consumer suffers in reduced quality.

*Fourth, another alternative would be to restrict severely product and packaging innovations.*

A few years ago we developed a new product, Cinnamon Crisp, which was completely different than any other cracker on the market. Because we had on hand the graham-cracker packaging facilities, we were able to introduce this product at a reasonable price and its success has been outstanding. However, because of the ingredients involved, with the sugar and cinnamon topping, this product in the one-pound graham package actually weighs 14 and one-fourth ounces. When this product was introduced, and continuing since, literally hundreds of people have written us in appreciation of this development.

Yet, since I was directly involved in the decision whether to attempt to market such an unusual product, I can tell you that if a standardized package of either 12 ounces or one pound had been required, the equipment investment required would have effectively prevented this product from appearing on the market.

More recently, within the last few months, Keebler Company has pioneered in a convenience innovation which would have been impossible had standardized weights and quantities been effective. Typical of the items involved is this package of Iced Coconut Shortbread cookies, which you will note includes two

plastic serving trays. As a result, the packaging involved, which is standard for several items in our line, dictated the weight of the finished package at 15 ounces. This innovation has been extremely well accepted by consumers, but I must point out that it would have been impossible to incorporate the serving trays in this package had standardization at quarter-pound multiples been in effect.

None of the four alternatives—higher prices, discontinued items, altered quality or unnecessary restraints on innovations—serves the consumer's interests. All would affect the livelihood of our employees.

As a consumer myself and as the representative of Keebler Company and the 6,700 people whose livelihood depends on its success, I urge you to reject *any* provision imposing standardized packaging.

At the outset of my testimony I said I believe that those who have advanced this legislation are sincerely concerned with the consumer's interests.

I respectfully submit that the threat of higher prices with no increase in value, the reduction in items which the consumer either needs or wants, the very real possibility of unemployment in the food industry and the curbs on innovation in products and packaging are not in the consumer's interest.

If you would visit the cookie and cracker department in your neighborhood grocery store, you would find that almost all the items packed in weights other than quarter-pound multiples are at three prevailing price levels. You would easily see how convenient it is to judge price-weight relationships by comparing weights against a uniform price. You would find intense competition not alone in price but also in variety and convenience.

Fortunately, we are of one mind in considering the importance of meeting the consumer's need and wants. I want to thank you for the opportunity to present our sincere belief that any provision for standardization of packaging will impede rather than help in our ability to meet the desires of the consumer.

Mr. HEKMAN. Thank you.

My name is Edward J. Hekman. I am president of the Keebler Co. with headquarters in Elmhurst, Ill. Keebler had been known for many years as United Biscuit Co. of America. We changed our name a few months ago.

We operate in 43 States under regional names that are perhaps better known to members of the committee such as Strietmann, Hekman, and Supreme.

On behalf of the Keebler Co. I wish to thank you, Mr. Chairman, for this opportunity to voice our concern over this pending legislation because we sincerely fear that this legislation would ultimately hurt the consumer through higher prices, reduced varieties of wanted products, and it will certainly affect our company, its 6,500 shareholders, and its 6,700 employees.

We believe that the proposed legislation will:

- (1) Raise prices of our products with no increase in value.
- (2) It will force us to drop products from our present lines.
- (3) It will seriously limit our ability to develop and market new products. And this can only mean lowered employment for our 6,700 employees.

Our sales last year, just to give you a picture, were roughly \$138 million, and we comprise about 15 percent of the biscuit business, but in terms of the total food business we are a very small factor.

We operate in 43 States with principal bakeries in Cincinnati; Macon, Ga.; Grand Rapids; Philadelphia; Denver; Chicago; Michigan City, Ind.; and a candy plant in Greenville, S.C.

Mr. FRIEDEL. I don't see Baltimore on the list.

Mr. HEKMAN. Lest there be any misunderstanding, I would like to say publicly that I assume that all those who have introduced and supported this legislation are motivated by a sincere concern for the

consumer, and I in turn must ask those who have supported this legislation to assume that those of us in the food business who have opposed this legislation are not on the side of deception.

I assure you that I personally, as well as others in my company and in our industry, and hosts of others in the food business, have supported legislation which is aimed at making deception illegal.

I know of no responsible executive in the food industry, and I know hundreds, who does not feel that deception is immoral and illegal, and nothing would destroy a company like ours more quickly than deception of the consumer on whom we depend for tomorrow's sales.

Meeting the consumer's needs and wants, gentlemen, is our business and how well we do it determines our success. And just because this is our business we in our company and our competitors in theirs are tuned in to the consumer in a way that I respectfully submit no agency of Government ever could be.

In our company, for example, we do a great deal of extensive market research by using, first of all, our own employees at the plant level, and in our corporate office on panels and with controlled conditions, and then moving into consulting firms that consumer-test for us, and then having major consumer tests by mail, amounting to as many as 500 families, regional market tests, and, finally, national marketing.

But even more important than this type of information I think is the unsolicited communication that we get from the consumer. My own experience in this industry, Mr. Chairman, dates back 31 years, and even as a young man going around with my father to grocers our concern was to find out through the grocer what the ultimate consumer wanted in the way of new packages or new products, all the things that go to make up our business.

I was a salesman for a number of years and called on the trade and lived off the commissions I was able to earn by the sale of biscuit products.

I have interjected these personal references to explain that I still have an intense personal interest in what the consumer wants in the matter of biscuits. We have 1,200 salesmen, 300 sales supervisors, for a total of some 1,500 sales people that are out 5 days a week and each week they compile a report of comments which are summarized and is on my desk each week and I can assure you that each week I very seriously look at this.

I did it as recently as yesterday. I think in a way of speaking we in business are as responsive to our constituents as you gentlemen are to yours but the amazing thing to me is that in 31 years with this company and being exposed to all of this communication with consumers I have never received a signed communication that indicated to me that our company should move in the direction of standardization of our cookie and cracker products.

Well, if she doesn't want standardization, and that is my conviction, gentlemen, then what does she want? Publicity given to those who have spoken in behalf of this legislation would indicate that the primary purpose of the bill is to remove the confusion that faces the shopper in the supermarket.

Much has been said about the 8,000 items. Standardized weights and quantities in which products may be sold is the provision which

has perhaps received the most publicity in this bill. I just interjected here parenthetically that if any of you have feelings about the 71 brands or sizes of potato chips a trip to a supermarket I think will convince you that the selection that is available is not excessive and it is reasonable.

Anyway, continuing, we feel that the consumer wants reasonable prices and I would like to state that we should not underestimate her ability to judge prices.

It has been my experience honestly, and I don't want to indicate where this was, where just a very small increase in the price of the product had an almost immediate effect on the sale if it was up and I can also state that where we lowered the price even a small amount the sales increased.

I think this is true of all of us in the business. However, I would like to state further that price is just one of the factors that determines the purchases that are made by the consumer. To illustrate that, I have some packages here that I would like to put in the record.

First of all, I have here a package of our supreme chocolate fudge sandwiches. This package sold at a retail store, and the marking is on here, 1 pound, at 39 cents.

By comparison I have a package here marked  $1\frac{1}{4}$  pounds. Now, this package, gentlemen, also sells for 39 cents. Obviously if price comparison was the primary aim, this 20-ounce package would outsell the 1 pound. Actually the more expensive package outsells the other one about 4 to 1.

To illustrate it further, I have this package at 49 cents. It is a pound and a half for 49 cents. Compared with this package, there is 50 percent more product for about 25 percent more in price and yet the 1-pound package outsells the  $1\frac{1}{2}$ -pound 3 to 1.

Now, there is a simple explanation. These products are not purchased on the basis of price. There are other factors, flavor, personal taste. Perhaps I could note that the largest selling sandwich cookie in the United States is produced by one of our competitors. It is not a pound for 39 cents, but 12 ounces for 39 cents, again proving that in choosing what to serve her family, how to please her children and her husband, the consumer takes into account what I like to refer to as total value.

Now, another aspect of the same thing, we have here a package of our 1-pound saltine Zesta crackers and we also market the very same product in a 2-pound box. The protection in the two packages is identical. This one has 16 interwraps and this one has 8. The protection is within the package in the packets, as you see them described here on the package.

But despite the fact that the 2-pound package is a better value by over 10 percent, the 1-pound package outsells it on a package basis of 14 to 1 and on a pound basis of 7 to 1. The difference there obviously isn't flavor. The only difference there is convenience. The 2-pound package is sold almost exclusively in rural areas where the cupboard shelves are larger and where there is more room to put the product and where trips to the grocery store are less frequent.

Rational price comparison is easy and the price differential is obvious. No law is needed in our opinion to protect anybody and the

factory of receiving that standardized weight would result in savings per unit, the average household should be readily apparent.

The consumer is interested in more than price; in this case, convenience is the upshot. The choices in the grocery store were not imposed on consumers. This variety was and it is directly dictated by consumers and, as a casual chat with any grocery buyer would prove to you, no product gets on the shelf unless there is a reasonable belief on the part of the buyer that the demand will be there to move it off the shelf.

The shopper dictates the number of choices she wants. By coincidence, when I entered the business in 1935 the choices available to a consumer were considerably less than they are now. With the vast increase in the variety available as stores became bigger and bigger something else happened.

The competition for the shelf became keener and it is no coincidence that this change in marketing of grocery products in the stores themselves spurred a comparable revolution within the companies.

This brought in innovation, convenience, protection, quality control, and I might add increased price competition. I think it is noteworthy, gentlemen, that this intense competition has brought about a built-in protection for the consumer against even unintended deception.

A major food company today, such as ourselves, must be prepared to submit its line of products to very sophisticated buyers at the large stores, chains, and these are scrutinized very closely first by the buyer and then by a committee.

So besides what we do in our own offices, there is this additional built-in protection. At the outset I indicated in my testimony that in our industry we fear this legislation because we believe it will result in higher prices and that is the point I would like to get to now.

Approximately two-thirds, Mr. Chairman, of our sales are generated by products that are packaged in quarter-pound multiples like this and like this and like this and this and this.

However, these products, accounting for two-thirds of our sales, comprise only half of the items that we market. Now, it is the remaining one-third of the sales and over 50 percent of the items for which I have a great deal of concern and I would like to indicate four alternatives that are open to us.

What can we do if the bill is passed in its present form? I would say we can do four things and I would like to spend just a little time on the four and I have some cost figures to document them.

The first thing we could do would be to install new equipment and the additions to our bakeries to accommodate the equipment.

Second, we could discontinue those items where the volume did not warrant the additional equipment.

Third, this may sound a little strange, but I will try to explain it. We could alter the quality of the product to meet the standardized weight.

The fourth thing we could do, I submit, is have fewer product and package innovations.

Parenthetically here, but I think important, it seems a bit strange to me, Mr. Chairman, that some of the people who have supported this

type of legislation are the very ones who are concerned about the fact that business is getting bigger and corporations are getting larger and there is this fear and concern for the smaller company. I would like to state that in my opinion the ability of a company to comply with this legislation is going to be directly related to the size and the financial strength of that company.

Putting it another way, in our opinion this bill as presently written, proposed, is going to be much more disastrous—well, perhaps that is too strong a word—much more difficult to comply with for a small company than for a company of some size and I think that is fairly obvious, but I will be glad to entertain questions on it.

On these four alternatives, the first one is the increase in prices because of the installation of new equipment and building additions that would then be used undercapacity.

Now, just to tell you a little about our business and the industry in general, roughly one-third of biscuit sales are in the cracker category, like those products on this end of the table.

Two-thirds of our business, our dollar volume, is cookies, and that is true of our competitors. Those are industry percentages. Now, when I was here, Mr. Chairman, 2 weeks ago, I heard some questions from the members of the committee asking the gentleman who was testifying at that time to come in with specifics, how much capital cost, how much annual cost, how much per package, and continuing cost. I have tried to do that.

I had just 2 weeks, but the day after I got back I set up a task force and got with it. Obviously I could not go through all of our lines of some 200 items, but what I did was to take this cracker part of our business, which is one-third of the total by dollars, and I took off all the items there that were in anything except quarter-pound weights.

That added up to a little over \$13 million of sales out of a grand total of our sales as I gave you of \$138 million. In other words, you are talking about 10 percent of our business, of the total business, and then I made some assumptions which I had to do based on the bill.

For example, I assumed that sales would not fall, even though a price went up, which of course isn't really an expected thing to happen but you have to start someplace.

Just to show you how it works, I have here six new snack items—Bacon, Lettuce, and Tomato Tickles; and Onion Fusions; and Sesame Sillys; and the like of that—six items that are just coming on the market to compete with one of our major competitors who markets a similar line in a slightly different package.

Of these six items, two are packed 8 ounces; three,  $7\frac{1}{2}$  ounces; and one is  $7\frac{1}{4}$ . Now, the packaging equipment to put the crackers in these boxes, in these cartons, for one line of equipment is \$500,000 and this compares very favorably or very closely with the figures given previously by Mr. Schroeter of the National Biscuit Co.

These products come off the 300-foot ovens at the rate of approximately 5,000 pounds an hour and it takes some very sophisticated, high-speed expensive equipment to form the inter bag and the carton, fill it, close it, and then to bundle it in six cartons for shipment to grocery stores.

Now, this isn't the oven or the input equipment. Just the gear to package these. One line costs a half million dollars. What I have tried

to do then is to take all of this, and I did this to all of the items on our price list that are in the cracker section that are in anything except quarter-pound multiples.

I won't read all of them, but it is such things as Bridge Mix, Butter Flavored Thins, Cheezo, Cinnamon Crisp, and others. This adds up as I said to about \$15 million. To do that would cost us in terms of capital expenditures \$3,927,000 and an annual increase in operating cost of \$867,770.

If you convert that to the number of packages that this 10 percent represents it would figure out between 2½ and 3 cents per package.

Now, that is the best that I could do in coming up with what I feel are conservative figures. I could read the statement that we drew up but I will just put this in the record, Mr. Chairman, which is this restatement of what I just said of how we figured this.

(The cost summary follows:)

*Cost summary if all products are continued*

**Capital expenditures:**

Additional packing lines (9 lines at the cost of)-----	\$2, 912, 500
Additional building space for packing lines-----	924, 500
Rebuilding of existing equipment-----	90, 000
<b>Total, capital expenditures-----</b>	<b>3, 927, 000</b>

**Annual increase in operating costs:**

Maintenance and depreciation on additional equipment-----	379, 170
Freight-----	17, 000
Loss of packing efficiency-----	313, 000
Excess cost of cartons to be purchased-----	158, 000

<b>Total, additional annual operating cost-----</b>	<b>867, 770</b>
---	-----------------

Mr. HEKMAN. Continuing then, I have here some samples of competitive items. Here is a product from the National Biscuit Co. known as Sociables. Here is their Merry Makers, both fine products I might add. But you will notice that the package is somewhat different from ours as to size.

You see, one is higher and theirs has more depth to the package. The bill the way we see it here talks about voluntary standards; in other words, working this thing out.

Now, we are just two companies. I can tell you that the other people in the business have still another size, but I just like to raise the question of how the authorities would go about deciding which size to use.

If they choose our size we would be very happy, but I am sure the National Biscuit would have to spend \$500,000 per line just to stay in this type of business.

On the other hand, it is obvious we wouldn't be very happy if they told us after we had discussions and all, and it would have to come out some way, that we would have to go to their size.

As I indicated, there are four alternatives to our problem and the second alternative would be to discontinue those products with sales volume that could not reasonably justify additional equipment.

One of the biggest selling items in our line is our Honey Graham Crackers. We use this same equipment for a number of products,



for the Cinnamon Crisp, and also for an item that frankly I hope you never have to eat because this item is salt free and I don't think anybody that didn't have to eat it would eat it. Frankly it doesn't eat very well, but salt, as those of you who are bakers know, besides performing a flavor function in a product, controls the function of controlling fermentation. It just so happens that without salt in the product the product has different characteristics and instead of getting a pound in here we get 13 ounces in this packet.

So if you told us we had to make this either 12 or 16, I can tell you categorically that we would drop the item, which wouldn't hurt us too awfully much but it would disappoint a lot of people, because to the best of my knowledge this is the only entirely salt-free cracker being offered in grocery stores.

The third alternative is to change the quality of the product. You might say we wouldn't want to do that. Actually this is how it comes out.

We have this tray, we call this a tray, and, when we developed this item known as Caramel Cremes, we found this, making the cookie of just the quality we wanted: In other words, we just start out, we have the tray which we use for several other items, and we put the cookie the way we think the consumer wants it in that tray and this comes out to this odd weight of 12½ ounces. That is the way it happens to come out.

Any baker can tell you that if you told us we had to go to 12 ounces on this it wouldn't be too difficult to do. But the cookie wouldn't be exactly the same. It wouldn't be the way we feel it ought to be.

Here is perhaps still a better example. We have some equipment that is semiautomated to form this tray which is a split tray, and this is our Deluxe Graham. It is a graham cracker. It is coated with a delicious coating and the coating runs about 50 percent of the total weight. This is 14 and a fraction ounces.

If you told us that we had to make this 16, there would be a way to do it, but it would also be a way to make it 12. All you have to do is make the cookie a little thicker so that the percentage of coating drops from 50 to 40 percent and you accomplish it.

In other words, I am not saying that is the course we would take, but what I am saying is that as we develop a product, if we have to be figuring that we have to do it within the standardized context then we are forced to change the product from the way we think as bakers it ought to be to fit a package and frankly there has been a maxim in our company that we don't do business that way.

The fourth alternative is to restrict severely our product and packaging innovations. We have a product here, gentlemen, known as Cinnamon Crisp. It is one of the bestselling products we have. This product is packaged you see in this same box, in the same one as the graham cracker. We developed this product about 10 years ago and we have literally sold hundreds of millions of pounds of this product.

It comes out 14½ ounces. It is plainly shown on the label. The reason it does is because the characteristics of this product are somewhat different from the graham cracker and they are certainly different from the salt-free cracker.

When we developed this we had no idea how successful it would be, so we took the equipment that we had. We had a several hundred

thousand dollar investment in packaging gear and we took the equipment that we had and in that equipment we put this product.

Now, had we been at that point forced either into 12 ounces or 16, I submit that it is quite unlikely that the decision would have been made to go ahead because the decision would have entailed a very considerable capital outlay which under our present arrangement was not necessary.

The same thing was brought out, I think, very well by the testimony the other day of Mr. Murphy of the Campbell Soup Co. I will just mention this. It is in the report.

We developed these trays. There are two trays in here. Actually there are four, but they are tied together in here and this has been very well received by consumers, but again by having a tray within a bag there is still more of a problem of meeting any type of standardized weights.

Finally, I respectfully submit that the threat of higher prices with no increase in value, the reduction in items which the consumer either needs or wants, the very real possibility of unemployment in the food industry, and the curbs on innovation in products and packaging are definitely not in the consumer's interest.

Fortunately, I think all of us are of one mind in considering the importance of meeting the consumer's needs and wants. I thank you for this opportunity to present this material and to share with you our real concern for some of the provisions of this bill.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Hekman.

Listening to your testimony I would like to ask you these two questions.

If this bill were amended to eliminate the provisions to standardize weights and quantities and if we were to substitute two prohibitions—first against nonfunctional slack fill; and second, against packages which appear to be the same as before, but actually contain less—would you still object to the bill?

Mr. HEKMAN. Obviously, Mr. Chairman, I directed most of my remarks to the standardization features of the bill because, being a "baker"—and if I can put that in quotes—this is the thing I know a little bit about.

The CHAIRMAN. That is the reason why I asked you.

Mr. HEKMAN. I am certainly not a lawyer. The standardization features of the bill as I see it are certainly the most objectionable to our company.

Now, as to the other items in the bill, I didn't bring it all out here but our lawyers tell me that there are some things—and some of the other witnesses brought them out—that would still be very definitely a problem.

I didn't read all of my statement, but in the statement that is printed that we feel that present legislation covers all types of deceit and that statement has been made here by members of the committee.

I think that you gentlemen are certainly experts in the matter of legislation. I have some knowledge of the baking business. I frankly wouldn't know too much about some of the other features. I would rather leave that to our attorneys and certainly to you gentlemen.

I would like to direct my remarks the way I have with the statement that our lawyers tell me that the present laws if enforced are adequate to stop any type of deception plus the fact, as I have indicated, we don't think it is good business.

The CHAIRMAN. I would like to ask: What about the cents-off provision of the bill? Do you object to it?

Mr. HEKMAN. Mr. Chairman, we never use cents off.

The CHAIRMAN. I know you don't.

Mr. HEKMAN. Because from a marketing standpoint for our company, for our type of product, and especially as it relates to our delivery system, for us it doesn't make sense.

I would just like to make this comment, that I think, although understand we don't use it, it is a device that permits a smaller company to make an entry into a field against a larger company that has a large share of the market. I think we ought to recognize that this is something that is definitely going to help a large company a lot more and it is going to hurt a small company a lot more than it is the large ones and that is easy to document.

The CHAIRMAN. I think some of the larger companies in the land are using it.

Mr. HEKMAN. Yes, sir; they are.

The CHAIRMAN. What about the ingredients provision? Do you object to that?

Mr. HEKMAN. I share the concern of Mr. Murphy the way he stated it 2 days ago regarding the very real possibility of disclosure of formulation.

The CHAIRMAN. It doesn't say that in the bill. It says "other than information concerning proprietary trade secrets." We don't want those, not at all.

Mr. HEKMAN. He made the point, Mr. Chairman—and again I am not a lawyer—putting it in one sentence, we understand the present law and we put the products on here in descending order of importance.

Now, that was the discussion of Mr. Murphy: If the bill is going to force us to say flour by weight is so much of this package and salt is so much and chocolate and cocoanut and all the other items, if that is the meaning of the bill, then we are giving our formulas, which is certainly one of our biggest assets, to our competitors.

The CHAIRMAN. I think that was clearly set forth in his testimony. I did notice that most of your testimony was on the fact of weights and quantities.

Mr. Friedel.

Mr. FRIEDEL. Mr. Hekman, I was very much impressed with your statement and your exhibition here of different packages and I can understand your concern.

You spoke of the principle of the bill, but you don't want to have to increase costs so the consumer would have to pay more.

If the amendment were offered as our chairman has stated about the sizes of packages I think that would correct a great many of your objections to the bill and I think would take care of the packaging that you are so alarmed about.

I am looking at six packages there and you feel that, under this bill if we didn't amend it, you would have to put six different sizes on those six packages?

Mr. HEKMAN. We would have to have one size for the 8 ounce which we have now and would have to have another size for the  $7\frac{1}{2}$ , and another for the  $7\frac{1}{4}$ .

Mr. FRIEDEL. Those that you are just touching all have different weights; is that correct?

Mr. HEKMAN. No; they don't have all different weights.

Mr. FRIEDEL. They all have the same weight?

Mr. HEKMAN. No, sir. I can read them here. It would probably be easier. There are three sizes,  $7\frac{1}{4}$ ,  $7\frac{1}{2}$ , and 8.

So, instead of having one line we would have to have three and each one of them is \$500,000. That is only part of the cost. That is the capital outlay per line.

Mr. FRIEDEL. That seems to be your principal objection.

Mr. HEKMAN. Obviously I have gone through the whole matter of the bill in limited time, but I would agree with you, Congressman, on that. The standardization features of the bill are a very substantial concern and for that reason I directed the principal part of my testimony against the standardization features of the bill.

Mr. FRIEDEL. I can assure you that this committee does not want to cause any havoc with the manufacturing of your product as the chairman just indicated about a certain amendment.

I think if that amendment is adopted you would have no cause for alarm.

Mr. HEKMAN. That would certainly be reduced.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. I wasn't here during the key part of his testimony but I was just impressed by the ease with which he immediately identified the weight on each of those packages. You are not trying to conceal the weight. You have the figures 7 and  $7\frac{1}{2}$  and  $7\frac{1}{4}$  marked on the product, have you not?

Mr. HEKMAN. Yes, sir. Every one of our packages has the weight on the front panel.

Mr. DEVINE. There is no attempt to deceive anybody then by concealing what the contents may be or what they weigh?

Mr. HEKMAN. No. If we were to change that we would hear from consumers and we would hear from dealers and it wouldn't be right. This is the right place for it, the front panel.

Mr. DEVINE. Thank you.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Sir, how many different lines do you have, not different brand names, but how many sizes of packages do you presently put out?

Mr. HEKMAN. Well, in grand total, I mean everything we make, this doesn't quite all go through stores in the form of packages, but the grand total is 227.

Mr. MACDONALD. In other words, you make up 227, if I understand you correctly—

Mr. HEKMAN. Different products.

Mr. MACDONALD. Yes; but I am talking now about different sizes of the boxes in which you package your products.

Mr. HEKMAN. I want to be sure I have your question. You mean packages now?

Mr. MACDONALD. Yes.

Mr. HEKMAN. In other words, if we packaged this in 8 ounces, 1 pound, and 2 pounds, then how many is that is your question?

Mr. MACDONALD. What I am saying is, and it is very simple or it seems simple to me anyway, how many different size boxes do you put out?

Mr. HEKMAN. I would have to count them. I have a price list of our company here and I could sit down and count them or I would be glad to hand it to you.

Mr. MACDONALD. I think that you could just supply it for the record.

My point is that you have a great variety of size of packages now. I don't really see the terrible hardship that you contemplate if the thing is standardized. I am not saying I am for standardization, but I just don't understand the basis of your complaint.

Mr. HEKMAN. Well, as I indicated, and I will stand by what I submitted in the record, in the cracker section of our business which is one-third of our business, in the cracker section, the items that are not standard in terms of the bill, the items that are not standard are \$13 million, which is 10 percent of our business, and this is the cost.

Now, if you ask me what about the two-thirds of the business which are all these cookies and what the effect would be there to standardize all of those, I frankly wouldn't know. I would guess that it would take me about 2 months to find out because it involves 6 bakeries, 96 distribution points, and the mix between the bakeries and these distribution points in terms of freight.

On this I figured the freight. The freight factor on this cracker deal was \$17,000. Now, what it would be on cookies I don't know.

Mr. MACDONALD. I thought you said that each line would cost you \$100,000 for capital investment to change over to a standard size. Am I incorrect in that?

Mr. HEKMAN. I am not about to tell a Congressman that he is incorrect. I will give you the breakdown despite the fact that one of my competitors is here. I will just break it down on just this section of it here, just the six boxes you are looking at.

I gave you the total, right?

Mr. MACDONALD. Yes.

Mr. HEKMAN. Just on these, and that is obviously the biggest part of it, the annual cost would be \$425,000, annual cost just to do that, to do what has to be done in this area, and incidentally the capital costs on that compare very closely to what Mr. Schroeter gave in this committee a few days ago, 2 weeks ago.

Mr. MACDONALD. No more questions.

Mr. FRIEDEL. Will you yield?

Mr. MACDONALD. Yes, I yield.

Mr. HEKMAN. Have I answered your question?

Mr. FRIEDEL. Let me ask you this question.

Mr. HEKMAN. I would like to try again.

Mr. FRIEDEL. Under this bill if you were to package soda crackers in 1-pound packages and 1 pound of graham crackers in a package would they both be the same size?

**Mr. HEKMAN.** Oh, no. Right here is the difference. Graham crackers are an entirely different type of product and there are 144 of these in a pound and 128 of these in a pound. These are a different shape. They take different type packing and protection and are entirely different.

**Mr. FRIEDEL.** In other words, graham crackers are heavier than soda crackers?

**Mr. HEKMAN.** Quite a bit.

**Mr. FRIEDEL.** There would be a big difference in the size of the package?

**Mr. HEKMAN.** You put soda crackers in this package and you would have, I would estimate, almost a pound and a half, but you would have a different product, too.

**The CHAIRMAN.** Mr. Nelsen.

**Mr. NELSEN.** Thank you, Mr. Chairman.

One point you made that I thought was very important was when you mentioned that this bill under its present provisions would make it almost impossible for a small operator to meet its requirements because of the lack of capital. I think that point is certainly a very valid one.

Now, slack fill comes into discussion so often, and does that not directly tie into the point that you make, that if you were to change a line that it would cost a half million dollars?

Now, you want a certain weight of a product, but because the assembly line was set up for a certain size package you wouldn't always fill the package, not because you are attempting to fool somebody but because of the additional cost that it would take to set up another assembly line that would provide the size of package that would result in a full box. Is that a true observation on my part?

**Mr. HEKMAN.** We fill all of our packages to the very best of our ability. It is true that if we had to live with the provisions of the bill we would have to have many different sizes of packages to make them standard and still avoid slack fill. You have to start there.

You can't have slack fill. That is illegal and it should be.

**Mr. NELSEN.** It is illegal now.

**Mr. HEKMAN.** And it should be.

**Mr. NELSEN.** Witnesses have been asked whether they would support this bill if it were amended so that package size was not a part of it. Other questions have been asked as to whether witnesses would support the bill if formula exposure were not required. It seems to me that if we are moving in the direction of adding all these amendments, about all we have left is the title. Rumors have been floating around: "Just give us a bill. We don't much care what is in it."

So to me this is deception on the public politically speaking, and the bill is labeled by some in my judgment for political reasons.

Getting back to the cost, you mentioned that it would take a half million dollars to change a packaging line—that standardization would cost you a half million dollars.

Do I understand that your figure of \$3,900,000 was for equipment? Now that was for what? I didn't quite understand what this was.

**Mr. HEKMAN.** That would take, Mr. Congressman, all of the non-standard items in the cracker area of our business.

Mr. NELSEN. As I recall, you estimate that the operating cost would be \$867,770 for those additional lines that you would have to put in for standardization?

Mr. HEKMAN. Annual cost.

Mr. NELSEN. Yes. And the cost would be from 2½ to 3 cents per package additional cost to the consumer?

Mr. HEKMAN. We could not absorb \$867,000. In our case we would have to pass it all on because we would have no choice.

Mr. NELSEN. You mentioned also that 13 percent of your products were not standard size. Do I understand that correctly?

Mr. HEKMAN. No, in the cracker area, in the cracker area only. It is \$13 million out of a total sales of \$138 million, so roughly 10 percent.

Mr. NELSEN. Yes. I am interested in why you find it to the advantage of your company to have packages other than standard size. Am I right in my assumption that there are different sizes and quantities that the consuming public wants to buy and not always a larger size? Is that right?

Mr. HEKMAN. Yes, sir; that is a very valid point. We feel that these crackers are served at largely, let us call them "sociable" occasions. They are not feed so much to children. These are, let us call them, cocktail-type crackers. There are six of them. They are usually served on a tray, as you see here, and usually three or maybe even four different kinds would be placed around neatly arranged on a tray.

You are not giving these to children as they come home from school. You give them a graham cracker or saltine, but these are served in a different type situation and the weights would definitely have to be smaller because nobody would want to package these, I can assure you in larger packages.

Mr. NELSEN. In shopping, of course, habits will vary. For example, Mrs. Nelsen is out in Minnesota at the present time so I have been doing a little batching at home. I just love peas and I buy the smallest can that I can get because I don't care to have them standing in the refrigerator.

I know the cost may be greater per ounce, but it happens to be what I want under those circumstances. I presume that is part of the reason why you have to go off standard size on packages and also because, with some of the products you serve, you don't want to open a package and leave it open too long. It may absorb moisture and it will not be as palatable. That is possible.

Mr. HEKMAN. Yes, sir.

Mr. NELSEN. Thank you, Mr. Chairman. I have no more questions.

The CHAIRMAN. I would like to say to the gentleman from Minnesota and to everyone here that no one has approached me on this bill about taking anything out of it. I have asked some questions because I begin to get the trend that the only objection that has come to this committee is these two points.

I don't believe in bringing politics into it because if you take it back home you will find that whether Republican or Democrat that the people in the States are going to demand some action here on these matters.

Mr. NELSEN. Mr. Chairman, in rebuttal I might say that they are not getting it as far as the sale of this bill is concerned. Testimony

from administration witnesses indicates they are asking for things in this measure that are presently in the law and there is deception as to the sale of it.

The CHAIRMAN. No, there is not a deception. I disagree with you because we are trying to get something that will be understood by everybody and not case by case.

Mr. NELSEN. Thank you. Mr. Chairman, I don't agree with you.

The CHAIRMAN. That is all right, and I don't feel that it is a political thing. It is not. It is for the people of the country.

Mr. Dingell?

Mr. DINGELL. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Chairman, I don't know that I have any particular questions.

I thank Mr. Hekman for his testimony and bringing these exhibits which certainly help to educate me to your marketing process and point out some of the problems that you would have under some of the provisions of the bill that is introduced.

In order that I might see if I fully understand, you have six boxes of so-called cocktail crackers there and all the boxes are the same dimension, is that correct, sir?

Mr. HEKMAN. Exactly.

Mr. KORNEGAY. But none of them weighs the same or has the same weight of the content? Maybe some of them did have the same weight. I am not sure. That is what I wanted to find out.

Mr. HEKMAN. That is two in one size, three in another, and one in one.

Mr. KORNEGAY. That is brought about by the very density or specific gravity of the crackers in boxes, is that true?

Mr. HEKMAN. That is right, correct, and the configuration of the cracker.

Mr. KORNEGAY. And also the configuration of the cracker to determine how many crackers you were able to get in the box, is that right?

Mr. HEKMAN. That is true.

Mr. KORNEGAY. So if you were compelled by the law to put  $7\frac{1}{2}$  or 8 ounces of crackers into each box then you would either have to reduce the size of the box or increase the size, is that correct?

Mr. HEKMAN. Correct. Yes, sir.

Mr. KORNEGAY. That is the area wherein you compute a part of the cost that you give us here on this slip of paper?

Mr. HEKMAN. Yes, sir. That is where the capital cost goes in, buying that equipment and then of course the annual cost in operating it.

Mr. KORNEGAY. Is this the only size box that you have for these particular type crackers?

Mr. HEKMAN. It is the only size box we have. I think the answer to that would be "Yes." That is the only one we have near there.

Mr. KORNEGAY. In other words, you don't have small, medium, and large size in this particular type of cracker?

Mr. HEKMAN. Well, we have a larger size that we use for our Town House cracker, but—



Mr. KORNEGAY. I am talking about these specific crackers.

Mr. HEKMAN. Oh, no. The only size, the only size.

Mr. KORNEGAY. So you use the same basic container for each type of cracker?

Mr. HEKMAN. Exactly.

Mr. KORNEGAY. If you had to go to standardized weight in each box you would have to have at least three different sizes of boxes?

Mr. HEKMAN. Correct.

Mr. KORNEGAY. In order to put the same weight in each box, is that right?

Mr. HEKMAN. Correct.

Mr. KORNEGAY. And that is the basis for the increase in cost?

Mr. HEKMAN. Exactly.

Mr. MACDONALD. Will the gentleman yield?

Mr. KORNEGAY. Yes.

Mr. MACDONALD. Are you familiar with the bill, sir?

Mr. HEKMAN. I read the bill.

Mr. MACDONALD. I call your attention to page 7, section 5, which is talking about regulations and merely goes to those people who would be covered, that the FDA or the FTC would "prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof (in terms of weight, measure, or count)."

I am sure you are a very reputable concern representing this number of companies, and I don't see why, if your packages are labeled correctly and they have no intent or they are not likely to deceive retail purchasers, why you would be affected one iota?

It just wouldn't affect you, and, therefore, I don't understand the large protest that is being put up by reputable manufacturers. I would think they would be supporting the bill.

Mr. HEKMAN. I talked to our legal people about this, as you can gather, and they tell me that this section will permit standardization by weight, measure, or count. This section permits it.

Now, I am not one to predict all the things that can happen, but this permits it.

Mr. MACDONALD. You said you are a baker, not a lawyer, but you can read the English language, I am sure, and am I incorrect in stating that on line 13 that the ingredient is the "sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers." And, therefore, if you have packages that aren't likely to deceive, I don't see why you are hurt, and if you have some other feeling about it I wish you would explain it to me, because I don't understand your position.

Mr. HEKMAN. Again I am not a lawyer, but my lawyers tell me that this has to be read in connection with page 5, line 24, "Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4"—and here is to me the heart of it, "are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—" and then skip over if I may suggest, to 5.

To me it is very plain from this that whoever heads this thing can tell me I have to do just exactly what I have been talking about for an hour.

Mr. MACDONALD. On the contrary, section 5 protects you completely because it says "regulations effective to \* \* \* prevent the distribution of that commodity for retail sale in packages or sizes, shapes, or dimensional proportions which are likely to deceive."

Are you saying that your packages are in such sizes, shapes, or dimensional proportions that they are liable to deceive the retail purchaser?

Mr. HEKMAN. I will stay with what I said, Mr. Congressman, that deception is outlawed now. We are living within the law, so from that you can judge that our packages do not deceive, and if that is the case then why not take the whole thing out.

If all we are talking about is deception, I submit—and that has been submitted in this room, deception is already outlawed, but what I am fearful of—

Mr. MACDONALD. Yes, on a case-by-case basis, not on an industry basis. That is the entire point of this bill. We have heard testimony from everybody, manufacturers, retailers, the people who comprise the panel, and Mr. Dixon specifically said that the main reason he wanted the bill was that he wouldn't have to go after these cases that involve deception, case by case, but could put out regulations for the entire industry, and I see nothing wrong with that, do you?

Mr. HEKMAN. I am not for deception.

Mr. MACDONALD. You are for the flag and motherhood as well, I am sure.

Mr. HEKMAN. And I am against sin.

Mr. MACDONALD. Right.

Mr. HEKMAN. Right.

Mr. MACDONALD. And therefore should not be against this bill.

Mr. HEKMAN. I am not for the bill for the reasons that I stated, Mr. Congressman. This bill permits and makes available to the regulating authority the standardization of packages and it does that and everybody in the industry, every reputable lawyer that I talked to in our industry, tells me it does.

That is the way it reads to me and that is what it is going to cost us.

Mr. MACDONALD. I am a lawyer and I hope I am reputable and I disagree with your lawyers because I can read the English language as you can. If the packages will not deceive the retail purchaser, they are not hit under this bill.

Mr. HEKMAN. Well, again, under (d), page 7, "Whenever the promulgating authority determines, after a hearing conducted in compliance with 'such and such' that the weights or quantities," the weights or quantities, "in which any consumer commodity is being distributed for retail sale are likely," are likely, "to impair the ability of consumers to make price per unit comparisons such authority shall" and there it goes.

To me that is very plain that the bill permits it.

Mr. KORNEGAY. I don't know about that situation or not, but, Mr. Chairman, permit me to make this one statement. I think that possibly under the authority of this bill where one company is putting

out a cracker in a different size or different weight, slightly different, say a half ounce more or half ounce less or 2 ounces more or 2 ounces less, if in the opinion of the FTC the variance in size of package, contents of the package, and the cost would make it difficult for the average person to make a price comparison, then I confidently feel they would have the authority under the present bill to step in and say in order to determine which is the best buy and the easy way to do the arithmetic every package should contain the same quantity.

Thank you very much.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I was a little interested in your reference to trade secrets, more as a point of curiosity I think. We find it very difficult to keep secrets within this committee more than 10 minutes after a discussion has ended.

I was wondering if in a plant with several hundred workers there are actually trade secrets which it is possible to maintain from competition in regard to ingredients and systems of baking and so forth.

Mr. HEKMAN. If I understand your question correctly, very definitely there are in the business trade secrets as relates to formulation, types of equipment, processing, temperatures, length of bake, just a host of things that go to make a product.

Mr. VAN DEERLIN. Things that are known only to one or two key employees or supervisors, not to employees at large?

Mr. HEKMAN. Obviously the people that work in that one area know about it, but that is not information that even if it was available to a competitor would give him the whole picture.

In other words, I wouldn't want to take all your time, but on some of these items we do certain things to bring out the flavor, such as in Potato Piffles and Sausage Scrambles. Now, we wouldn't like to let people know just how we do that and I don't think that even the people in the plant understand fully how we do it except a few people in our research department and I think that is true of our competitors, too.

I would like to know how they do a few things.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD (presiding). Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Hekman, on page 7 of the same bill which you were telling Mr. Macdonald about, line 21, where the words are used "are likely to impair" how would you feel if the language were changed to read "would clearly"?

Mr. HEKMAN. Before I would answer that I would want to talk to our attorneys. If it would have anything to do and bring out any type of standardization like we are talking about here into our industry, I will stay by my testimony.

I might add I have some material here and I think it is worth remembering that this whole matter of price comparison is built around the idea that price is the important factor.

Now, I have tried to show that there are many, many other factors, but just assuming that price is the only factor, unless you do something beyond the manufacturer I submit that the alleged confusion

that is being talked about by some of the proponents of the bill would not be eliminated. It is very easy to illustrate.

For example, if I have a package here let us just assume of 15½ ounces and my competitor's package is 15 ounces. Under the terms of the bill this is confusing, you can't figure out the per pound very well on 15½ ounces, so we are told it has to be 16 ounces or 12 or some multiple, well, in the confines of our office we figure that we are going to go to 16 ounces.

Instead of being let us say a 39-cent package the package then becomes let us say 41 cents, but it is the full pound.

All right.

Our competitor kind of got it figured out that we are going to 16. He knows he has to change, but he is going to go to 12. So instead of easy comparison of two packages at 39 cents, one of them 15½ and the other within 15, now you have two packages, and one of them sells for around, oh, let us just pick a figure, 41 cents and the other figure being less weight sells for let us say 33 cents, so where there was at least some measure of easy figuring, you now have confusion.

I think you are familiar with the fact of how meat is sold. On each package of meat there is the weight of the package and the price and then what this particular package costs. It seems to me that if grocers in their thousands of daily contacts with customers had been led to believe that these customers wanted other things marked in the same way they would have been doing this thing a long time ago, but there has been no demand from customers and consumers for this sort of thing and the housewife knows what she wants and she asks for it.

And in my book she has not asked for any type of standardization.

Mr. PICKLE. Mr. Hekman, I appreciate your comments. I believe we are straying a little bit from the question I asked you and I assume that you do not wish to comment on whether you would be agreeable to the change in the wording "would clearly" in the place of "are likely to" without talking to your lawyer.

Turn over to the next page please, where it states, beginning on line 1 "and (g) regulations effective to establish reasonable weights or quantities, or fractions thereof."

I assume that here again you would want to talk to your lawyers, but the words "weight or quantities" is what scares you and what you assume might lead to standardization of the packages?

Mr. HEKMAN. That is right.

Mr. PICKLE. If the language were to read that they could, after these administrative procedural hearings establish certain regulations that would "clearly eliminate any deceptive labeling," would that suit you? Would that be agreeable to your company, to your people?

Did you hear the question?

Mr. HEKMAN. Yes, sir. I would say that anything having to do with standardization we would be opposed to. Whether I would be in favor of just what particular wording, I would have to see the wording, read it, and discuss it with my attorneys.

I am awfully sorry that I am not acquainted in the law.

Mr. PICKLE. And I am not a lawyer, and I can understand when you make the statement that you would be against anything that would lead to standardization. I assume everybody on this committee would

take the same position, but that doesn't leave this committee anywhere with respect to finding an answer to this problem.

That is all, Mr. Chairman.

Mr. MACDONALD. Mr. Satterfield?

Mr. SATTERFIELD. Thank you, Mr. Chairman.

I want to compliment the gentleman for bringing to us at least some definitive figures with respect to what the increased cost might be if standards of weight are promulgated.

However, sitting as close to the table as I am I notice on the six packages you have a statement all that I can read from here is "5-cent coupon inside" and I wonder if you can explain to me, sir, since some question has been raised about coupons, just what the coupon is inside of those boxes?

Mr. HEKMAN. I just hope this isn't a sample without one in. That could just be. But the coupon is just a coupon that is delivered to the store and it is good for 5 cents.

Mr. SATTERFIELD. 5 cents in coin?

Mr. HEKMAN. Yes. Yes, on the next purchase.

Mr. SATTERFIELD. Could I take that coupon to the store and get a nickel back?

Mr. HEKMAN. You could take a coupon to the store and on your next package of "Keebler Potato Piffles" you would pay 34 cents instead of 39 cents.

Mr. SATTERFIELD. Thank you, sir.

Mr. MACDONALD. If I may interject, in other words, when it says 5-cent coupon, it doesn't really mean that? You don't get 5 cents? You have to buy something else to get it?

Mr. HEKMAN. It doesn't say that, sir.

Mr. MACDONALD. I can't read it. Mr. Satterfield's eyes are better than mine. I take his word for it that it does say "5-cent coupon."

Mr. HEKMAN. It says "5-cent coupon inside good on your next purchase."

Mr. MACDONALD. As I can now see from here, the large print says "5-cent coupon inside" and then the small print says "on your next purchase."

Mr. HEKMAN. Mr. Chairman, I would say it is smaller print. I wouldn't say it is small print. I don't think there is any effort on our part there to try to fool people.

Mr. MACDONALD. I didn't insinuate that you would try to fool people. You said how reputable the firm is and I take your word for it, but it just seems to me that when you see "5-cent coupon inside" one would have a natural instinct to think that once you opened it up you would have something that was worth 5 cents.

You have explained that you have to buy another package in order to have it.

Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman. I have no questions.

Mr. MACDONALD. Mr. Adams.

Mr. ADAMS. Mr. Hekman, how many changes in packaging have you made in the last year?

Mr. HEKMAN. I don't think, Mr. Adams, I could make a satisfactory answer to that unless we defined more clearly what we mean by change.

Mr. ADAMS. Well, I notice in your testimony on page 16 that there is going to be a great increase in cost to your organization and to others if some standardization is required and you are required to make changes.

What I am trying to get at is from your testimony it appears to me that you make a great number of changes in packaging every year now, which already costs a great deal of money, time, equipment, labeling, and so on.

Mr. HEKMAN. In the cracker end of our business we have expensive sophisticated packaging gear and I can't think of any changes during the past year in any of the major packaging gear in the cracker end of our business.

In other words, we haven't changed this package, we haven't changed this package or this package, the shape of those packages I don't think in 20 years.

Mr. ADAMS. That is right. So you have really two parts to your business and this comes through again and again with industry witnesses.

You have two parts to your business, one of which is already basically standardized as you point out in your testimony, quarter pound, pound, 2 pound.

For example, your saltine crackers and your others have been packaged this way for years and you are pretty well standardized, are you not, on them?

Mr. HEKMAN. We are standardized on saltines; yes, sir.

Mr. ADAMS. Right. Then you get over into this other area and that is what I was going to ask you about.

On page 16 you indicate that if this bill were to pass there might be some increases in cost because of the bill, and yet you point out in the next line that, for example, 2 days ago your company introduced to consumers a line of six new snack crackers, with different regional brand names, and then you go on to point out that, of the six, two are in 8 ounces, three in  $7\frac{1}{2}$  ounces, and one in  $7\frac{1}{4}$  ounces, and the packaging machinery required to pack these items represents an investment of approximately a half million dollars.

The question I am asking you is, in line with these innovations, aren't you constantly spending this money and changing, anyway?

Mr. HEKMAN. Well, I think you made my speech, but we had this equipment and it was underused. We were packaging and still do package an oyster cracker, 7-ounce townhouse cracker and a cheese cracker on this equipment. We have had equipment.

We spent almost 2 years developing this line of products to use this very equipment that we had at our Cincinnati bakery.

Mr. ADAMS. All right. So you do have in this line some standardization already I assume—

Mr. HEKMAN. You mean the cookie line now?

Mr. ADAMS (continuing). The crackers and specialty item type lines, a great many types of packages and sizes and you are constantly changing them, are you not?

Mr. HEKMAN. We are coming out with new items, but again, Mr. Congressman, we are not changing the equipment. This high-speed bulk fill equipment that we use here has not been changed since we bought it.

Mr. ADAMS. All right. So you really have as far as the size of container is concerned then a standardized set of sizes?

Mr. HEKMAN. That is right; yes.

Mr. ADAMS. So your sizes are standardized according to your equipment and I assume your competitors' probably are, too.

Mr. HEKMAN. Well, his are a little bigger. His standard is bigger. He packs all of his in this box.

Mr. ADAMS. All right. You either have a whole series of different equipment changes you are making all the time, or you have a set of sizes that you don't change and I gather from your testimony that you don't change them though you may change the labeling and you may change the coloring on the box and so on? Is that correct?

Mr. GILLIGAN. Will the gentleman yield for a minute?

Mr. ADAMS. Yes, sir.

Mr. GILLIGAN. I can't find the reference in the testimony of the president of the National Biscuit Co., but I think when we are talking about standardizing we have two things: standardizing within a given company, and if I remember that testimony correctly he pointed out that saltines, the four biggest varieties, were not standardized as between competitors.

Each used his own standard package, but there were four different size packages. I may be incorrect on that, but that is my memory of the testimony.

So when we are talking about standardization we can talk within the plant or within the industry.

Mr. HEKMAN. I would like to state, if I may, sir, that this statement made by Congressman Gilligan is correct. I mean that is what was stated.

Mr. ADAMS. All right.

Now, I won't go back with you over 5(f)(3) and so on which is a section to take care of this problem because I only have a minute and I want to ask one more question.

You mentioned on page 10 that you believe that the largest selling sandwich cookie in America, made by one of your competitors, is higher priced than any of the three you have shown.

Would you agree to this: That probably one of the major factors in the sale of these types of products now is the amount of advertising money that is spent on them? In other words, I think if you want to talk about that, particular product it starts its ads out with "Oh Boy," and I won't go into the rest of it, but they spent umteen million dollars on television just stressing that one product. Isn't it the advertising to the housewife who is affected by this rather than price, quality, or almost anything else that sells it?

Mr. HEKMAN. I don't want to say something complimentary about my competitor's product, but I will say it is a very fine product, and I can tell you this about our product that I can speak about, that with these sandwich cookies that I set out here I am trying to set out the point that price isn't everything, that price is just one factor out of many in the housewife's choice, and on the packages that I have given you here, none of them carry any advertising.

Mr. ADAMS. All right.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Jarman.

Mr. JARMAN. Mr. Hekman, the main theme of your testimony as well as other testimony the committee has been hearing on this proposed legislation, is your fear that if the legislation is passed it will result in higher prices to the consumer, and you mentioned that your own company accounts for about 15 percent of the Nation's cookie and cracker business.

Don't you believe that competition in the marketplace, competition of the products that account for the other 85 percent of the cookie and cracker business, competition itself in the marketplace, will hold that price down to the approximate levels of today even though this bill were passed?

Mr. HEKMAN. Well, this whole matter of cost, Mr. Congressman, is of a great deal of concern. Our earnings in United Biscuit Co. for the first 6 months of this year were \$850,000, so you can see that an increase in annual cost of approximately the same amount would have cut our earnings in half.

Now, I submit that as the president of this company I would have to take some action and the action I would have to take would be to reflect that in the price of our products. In fact I would have no choice.

Mr. JARMAN. Do I remember you indicated your margin of profit is 2 percent?

Mr. HEKMAN. Our margin of profit last year was less than 2 percent on sales, 1.9 I think.

Mr. JARMAN. Thank you, sir.

Mr. MACDONALD. Thank you, Mr. Hekman.

Mr. DINGELL. Mr. Chairman, I would like to ask a couple of questions.

Mr. MACDONALD. Mr. Dingell.

Mr. DINGELL. I was wondering if you have any objection to having the consumer advised as to the unit cost? Let us take two or three packages there before you and you may choose them at will. Take the package of Chippers. How many ounces are in that package over on your extreme left?

Mr. HEKMAN. This is National Biscuit, sir.

Mr. DINGELL. All right. Then pick two packages of yours. Now let us take the one in your right hand, the cookies. Those are what?

Mr. HEKMAN. These are 1¼ pounds and they sell for 39 cents.

Mr. DINGELL. All right.

Identify the other two packages by name. You have one at 1¼ pounds; they sell for 39 cents. What else do you have there?

Mr. HEKMAN. The brand name here is Strietmann but let us just make it Keebler Co., Vanilla Creme Sandwich, 1¼ pounds, and in this particular store this merchant chose to sell it at 39 cents.

Mr. DINGELL. We have afforded the individual retailer the right to fix those prices?

Mr. HEKMAN. Oh, yes.

Mr. DINGELL. In his own tradition and with the antitrust laws and other things that we have. With regard to the other two packages, the one that I have had you hold in your left hand there, what is that?

Mr. HEKMAN. That is B.L.T. Tickles.



Mr. DINGELL. B.L.T.?

Mr. HEKMAN. B.L.T. That means bacon, lettuce, and tomato Tickle.

Mr. MACDONALD. Is that pickle or tickle?

Mr. HEKMAN. Tickle, T-i-c-k-l-e-s.

Mr. DINGELL. How many ounces in that?

Mr. HEKMAN. Seven and a quarter.

Mr. DINGELL. Beg pardon?

Mr. HEKMAN. Seven and one quarter.

Mr. DINGELL. Seven and a quarter ounces?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. How much does that sell for?

Mr. HEKMAN. Again the sale price is up to the merchant, but I would say that perhaps 80 percent of them would be sold for 39 cents.

Mr. DINGELL. Thirty-nine cents. Now the other package that you have there. Those are graham crackers.

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. How much are those and how many ounces to that?

Mr. HEKMAN. The weight is 1 pound. The price of these varies so. Maybe it would be easier to take one on which the price wouldn't vary quite as much. Shall I do that? Would that help you?

Mr. DINGELL. Would you say that again, sir?

Mr. HEKMAN. The price on this one varies quite a bit, the retail price, not the wholesale. The retail price varies, but let us say 37 cents.

Mr. DINGELL. Thirty-seven cents. Now, the point that I want to discuss with you deals with a little different example, perhaps, than the one that we have before us, but you will concede that the unit price of each one of these is different. Am I correct?

Mr. HEKMAN. The unit price?

Mr. DINGELL. The unit price.

Mr. HEKMAN. Is 39 cents, 39 cents, 37 cents.

Mr. DINGELL. But the unit price per ounce varies?

Mr. HEKMAN. Oh, yes.

Mr. DINGELL. In one case it is 39 cents for 20 ounces; in the next case it is 39 cents for  $7\frac{1}{4}$  ounces; and in the third case you said it varies but we can say 37 cents, as it isn't that important, for 16 ounces. Am I correct?

Mr. HEKMAN. Yes.

Mr. DINGELL. Let us take the case where you have the same exact kind of commodity. Let us take honey grahams, since there are a number of manufacturers of honey grahams. They are graham crackers. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. Obviously they are substantially similar in quality and content. There are differences, but generally they are substantially the same, are they not?

Mr. HEKMAN. Substantially.

Mr. VAN DEERLIN. Will the gentleman yield?

Mr. DINGELL. I will in just a minute.

There obviously are small differences, but they are relatively minor in the mind of any person who purchases them. Am I correct?

Mr. HEKMAN. I wouldn't say ours is the same as our competitors. I would be a pretty poor businessman if I said that.

Mr. DINGELL. I would say you would be a pretty poor businessman if you didn't say your product was the best. I don't think anybody on this committee would deny you your right of asserting that, but in the mind of the purchaser there is small difference, really, between them.

He might have a long established preference for one line or another line, but generally at the dinner table one is substitutable for the other with precisely or generally the same results. Am I correct?

Mr. HEKMAN. Let us say that you are saying it and not me.

Mr. DINGELL. Beg your pardon.

Mr. HEKMAN. Let us say that you are saying it and I am not saying it.

Mr. DINGELL. I am not trying to get an admission from you that is going to hurt your sales, but in general it is fair to say that if I were to go into a store, I could buy any of a dozen different kinds of graham crackers and put them on the table with substantially the same effect.

My family might prefer your very excellent product or might prefer another product, but generally Honey Grahams are Honey Grahams and if you have a recipe for pie crust or something that required graham crackers you put those graham crackers in, right?

Mr. HEKMAN. I won't buy that, but you said it.

Mr. DINGELL. Obviously professionally you wouldn't say it. I yield to my friend from California.

Mr. VAN DEERLIN. I was very disappointed in the witness where he came very nearly to conceding your point.

I am an inveterate consumer of graham crackers at bedtime and I have been very upset with Mrs. Van Deerlin when she has varied her husband's preference of the product because they are not the same and I would take a blindfold test on that.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. DINGELL. I have a couple of more questions I would like to ask. I haven't asked a question yet today.

Mr. MACDONALD. You are entitled to 5 minutes and you have had your 5 minutes, Mr. Dingell.

Mr. DINGELL. I would point out that this is the second time. I have not yet had a chance and I deliberately waived any opportunity to question the first time around.

Mr. MACDONALD. It is still the 5-minute rule and you used up your 5 minutes.

Mr. DINGELL. Then I will insist on an additional 5 minutes at a later time.

Mr. MACDONALD. Mr. Devine?

Mr. DEVINE. Just in order to correct the record, I was curious about this 5-cent coupon inside the box for the next purchase. It was in there.

Mr. HEKMAN. Thank you.

Mr. MACDONALD. If there are no further questions—

Mr. DINGELL. There are further questions, Mr. Chairman. I have some.

Mr. MACDONALD. I would just point out to the committee, and I do it with all good intentions, that we do have four other witnesses, some of whom have been waiting for 2 weeks to be heard, and if you insist on further questioning of this witness obviously you are within your rights, but I would like to expedite the hearing.

Mr. DINGELL. I intend to, but I have some questions I want to ask this witness and I intend to ask them.

If you will sit down, sir; I have a couple of more questions to ask you.

The point I am coming around to here is that it is possible to buy, let us say, graham crackers from six or eight different producers. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. A large number. It is possible to buy those in different-sized packages and different weights. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. It is also possible to buy them at different unit costs? In other words, because of different-sized packaging and different weight content, it is also possible to buy these different graham crackers at different unit costs, in other words, different costs per ounce. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. And if there are phenomenons like slack fill, it is possible for the consumer to purchase these graham crackers under misapprehension as to the unit costs or as to the exact amount of the graham crackers which he is purchasing.

Am I correct?

Mr. HEKMAN. Would you repeat that part about slack fill?

Mr. DINGELL. I said it is possible for a consumer to purchase these graham crackers with a misapprehension as to the total amount of graham crackers which he is purchasing or as to the unit cost of the graham crackers which he is purchasing, sometimes because of, but not necessarily always because of, a phenomenon like slack fill.

Am I correct?

Mr. HEKMAN. I don't think so.

Mr. DINGELL. Now let us take two or three different boxes of graham crackers. Are you going to make the flat statement that graham crackers manufactured by one in the country are sold at the same unit costs, same cost per ounce?

Mr. HEKMAN. No.

Mr. DINGELL. As a matter of fact, not infrequently they are sold at very radically different unit cost.

Am I correct?

Mr. HEKMAN. The unit cost between a 1-pound package and a 2-pound package is different. It is bound to be.

Mr. DINGELL. We will treat that. Obviously, between a 1 pound and 2 pounds there is a difference in cost. Am I correct?

Mr. HEKMAN. Correct.

Mr. DINGELL. Ordinarily one would expect that the 1-pound unit cost would be higher. Am I correct?

Mr. HEKMAN. As it relates to the 2 pounds; yes.

Mr. DINGELL. All right. So we will concede that. But it is recorded that on occasions 2-pound packages have had a higher unit cost than 1-pound packages.

Am I correct on that?

Mr. HEKMAN. I won't buy that.

Mr. DINGELL. Not letting the consumers have the protection of lower unit costs?

Mr. HEKMAN. I won't buy that.

Mr. DINGELL. You won't buy that?

Mr. HEKMAN. No, sir.

Mr. DINGELL. The Senate records happen to be full of it.

Mr. HEKMAN. What is it full of?

Mr. DINGELL. Of evidence where the large-sized package was sold at a higher unit cost, higher per ounce cost, than was the 1-pound package.

Mr. HEKMAN. I don't pretend to know everything that goes on in the grocery field, but as it relates to crackers the answer is, "No."

Mr. DINGELL. The point I am coming around to is a very simple one. Are you prepared to make a flat categorical statement to this committee that there are no packages in the industry, the industry that you are representing here today, which result in either confusion to the purchaser or that are sold under circumstances which are actually deceitful to the purchaser with regard to unit cost, in other words, cost per ounce—of Honey Grahams or any other particular kind of commodity that might be sold in the cracker or the cookie industry?

Mr. HEKMAN. I don't pretend to know what is going on in all my competitors.

Mr. DINGELL. You can't come in here as an expert and speak with great expertise on those points which you choose to speak on and which happen to favor your particular point of view and then turn about and wrap yourself in a cloak of ignorance on other questions.

I just simply asked you a very simple question. Are you prepared to make a categorical statement to this committee that packaging crackers in your industry does not result in any confusion or deceit upon the American purchaser?

Mr. HEKMAN. I don't think they do.

Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you very much, Mr. Hekman. You are excused.

Our next witness is Mrs. Anita Mott of Cosmetic Career Women.

Mrs. Mott.

**STATEMENT OF MRS. ANITA MOTT, COSMETIC CAREER WOMEN, INC.; ACCOMPANIED BY FULLER HOLLOWAY, COUNSEL, TOILET GOODS ASSOCIATION**

Mrs. MOTT. My name is Anita Mott. I appear here today as a representative of Cosmetic Career Women, Inc., an organization of more than 200 women employed in the cosmetic and toilet goods industry in various executive capacities.

I am replacing Irene Subtelny who was not able to return to Washington for this hearing. Therefore, I would appreciate it if Mr. Fuller Holloway, representing Toilet Goods Association, with whom Cosmetic Career Women is affiliated, could make an opening statement.

Mr. HOLLOWAY. Mr. Chairman, I am Fuller Holloway, a member of the bar of North Carolina and District of Columbia. I am a member

of the Washington law firm of Hamel, Morgan, Park & Saunders. My firm has been counsel for the Toilet Goods Association for the past 20 years. The association members manufacture more than 90 percent of the cosmetics in America.

We associate ourselves with the statement of Mrs. Mott. I will just take this opportunity rather than appearing at a later time but may file a statement otherwise. I do want to submit myself to any questioning right now.

Mr. MACDONALD. We are glad to have you here, sir.

Mr. KORNEGAY. Mr. Chairman, may I simply take one moment to welcome Mr. Holloway to the committee. He is a friend, a constituent of mine, and an outstanding attorney in Washington, D.C., who is quite well known in North Carolina. We are glad to have you here Mr. Holloway. Thank you.

Mrs. MOTT. For the past 5 years I have been president of Menten & Mott, Inc., 65 East 55th Street, New York City, a design company specializing in the graphic design of cartons and labels and industrial design of component parts—such as bottles, caps, aerosol valves—for cosmetic manufacturers.

I have been actively employed for 10 years previously in the cosmetic industry—for the first 6 years in the purchasing area of Revlon, Inc., then purchasing agent and package designer for Daggett & Ramsdell, Inc., and as director of purchasing and packaging for House of Fragrance, Inc., a division of Genesco, Inc.

I have learned much about what American women want in cosmetics and the packages in which they are contained. No cosmetic house would stay in business very long if it did not satisfy its customers. We devote a great deal of research in order to determine what is wanted by women both in their cosmetics and their packages.

A woman purchases a cosmetic for what it does for her. The beauty of the container does something for her too. When a woman buys a cosmetic package it is with the thought of display—not something to put away in closets or cupboards to be brought out only when used.

A woman's perfume and cosmetic packages are her easily affordable ornaments—for purse or dressing table. Cosmetic packages are bought to be seen; the lady insists on beauty of design and the artists who fashion the shape and the artwork must create with her in mind or her custom is not to be won.

Do not be deluded that American women are ignorant dupes—they are shrewd and careful buyers. They recognize quality and value. Any attempt to deceive can succeed only once. Business is built on repeated purchases.

Those of us who have the responsibility of catering to and satisfying the desires of American women with respect to cosmetics are quite concerned about the provisions of this bill which may well inhibit customer satisfaction.

Section 4: Section 4 of the proposed act does not seem to offer any particular problems since that section merely tells us to do that which we already do under existing Federal and State laws. In fact, we are now conforming our net content disclosure practices to recent changes required under the laws of various States.

We are pleased that the authorities in the States are cooperating in uniform regulations. We do hope there will be no variation between

any requirements you gentlemen impose from those of the State regulations.

Section 5: Section 5 of the proposed act, however, could very seriously restrict our abilities to satisfy our customers. Paragraph 3 of subsection (c) has to do with regulating how we are to show our special price reductions, or advantages of "economy size."

Inhibitions in this way seem to me to take away from women shoppers the advantage of special price reductions—something which especially women look forward to. The "cents off" or "half price" deal is particularly liked by women purchasers who oftentimes seek out this type of promotion.

It is also customary in our industry to offer price advantages for the larger size packages. It is really very difficult to understand why customers should be deprived of economy purchases.

Paragraph 4 of subsection (c) suggests that a woman can make price comparisons between different cosmetics on the basis of information with respect to ingredients and composition on the label.

A woman buys a cosmetic because of its odor, its color, its convenience of use, its dependability qualitywise, its packaging—what it does especially for her. She buys a perfume or cologne because its particular odor pleases her when applied to her person.

That perfume has been compounded by an expert "nose" and highly skilled technicians. A particular perfume may be out of her price range so she finds one within her price range to purchase. Any disclosure on the package of any of the 75 to 100 ingredients in such perfume has absolutely no relevance to her purchase.

She buys the lipstick because of its particular color and texture as applied to her lips. She discriminates by way of color, not by way of trying to make price discriminations among the ingredients. The same thing is true of rouges, eye shadow, fingernail polish, and all other makeup items.

It is the esthetic quality which is being purchased. She makes her price comparisons as between brands based upon her own ideas of beauty to be imparted by the particular cosmetic—not by some comparison of ingredient prices.

She also buys her creams and lotions for what they do for her hands, her face. She has all the opportunity in the world to make price comparisons among various brands—her selection depending on cost of the product and what each does for her.

When she wants an orange-red lipstick, she has no interest in looking at a label for price comparison of ingredients. It would tell her nothing to find that it is composed of beeswax, ozokerite, carnauba wax, ceresin wax, lanolin, lanolin absorption base, isopropyl myristate, castor oil, eosine, antioxidant, color, and perfume. Would she, for price considerations, compare such lipstick composition with the composition of another brand? She would not.

Her hand creams and lotions are generally comprised of emollients, humectants, emulsifiers, preservatives, perfume oils, and coloring agents, which basic categories, in any one lotion, may be formulated from a dozen different chemical compounds.

Selection can only be made on the basis of the quality of the complete lotion, its cost, and the personal satisfaction to the user, not relative costs of inert ingredients.

The report of the Senate committee, with reference to subsection 5 (c) (4) states:

Here the committee is primarily concerned with the ability of consumers to make price comparisons among competing products with varying proportions of active or costly ingredients.

Under existing requirements of the Food, Drug, and Cosmetic Act a cosmetic is also a "drug" if it contains an active ingredient, and such active ingredient has to be shown on the label. If a hand lotion contains, in addition to the above-described materials, a healing agent then the lotion is also a drug and the healing ingredient must be stated on the label.

"Active" isn't defined in the act or in the Senate committee report on S. 985, but if the term has the same meaning as in the Food, Drug, and Cosmetic Act, subsection 5(c) (4) of S. 985 is surplusage applied to cosmetics and drugs. Otherwise it is confusing.

Our industry is engaged in constant research to improve our products. Package design, artwork, label imprinting, must precede marketing of a product and once design and information dies are cast we order for long-term use in order to keep costs from being prohibitive. We must, therefore, be certain of label requirements long in advance or greater cost to the consumer inevitably results.

Trade secrets are valuable to cosmetic manufacturers and we understand that subsection 5(c) (4) does not require disclosure of trade secrets. Any regulation with respect to "composition" must necessarily affect more than one manufacturer's product if comparison is to be made.

Vexing problems are immediately apparent. The agency must predetermine whether or not compositions involve trade secrets and in hearing procedures the very "trade secret" involved may have to be disclosed.

We are also troubled by paragraph (5) of section 5(c) of H.R. 15440. Our packages are designed through long experience with customer preference. We know what American women will select in the way of packages.

For her cosmetic packages she wants beauty as well as utility. We, in response to customer preference, put our cosmetics in a variety of shapes—from the shape of a Grecian urn to slim, attractive compacts, or shapes easily held, such as for shampoos in the shower. Subsection 5(d) may also cause serious problems.

Costs can oftentimes be cut down by using the same size jars for different products, which products may have varying densities. Thus the same size jar may hold varying weights, depending on the product. You cannot standardize both weight and volume.

Such legislation can seriously undermine the particular business of creative design which vitally involves a sizable segment of the industry. We are now limited as to area of contents and legal information—and rightly so—as well as to type size of this information.

Were we now to face the prospect of limitation of shapes and sizes of containers, as designers we would find ourselves confined to so small an area in which to create the kind of package expected by the female consumer, that we consequently would have no reason to be.

The inclusion of ingredients listing, as well, on the small area of a cosmetic package, would further inhibit any creativity. Where we

have faced these specifications in such industries as insecticides, chemicals, and fertilizers, we have agreed with no thought of protest since we were working with a larger labeling and packaging area and were preparing a utilitarian hard-sell product. Not so in cosmetics—here we are working in a very limited physical packaging area and are preparing an illusory product. We are selling beauty, femininity, and hope. Please don't inhibit beauty of design of our packages.

Thank you very much for hearing me out. I hope I have helped you not to allow regressive approaches to women's cosmetics and packages, as well as your own.

Mr. MACDONALD. Thank you very much. I just have one question.

I understand most of your testimony, but I thought you said that you were selling hope.

Mrs. MOTT. Yes.

Mr. MACDONALD. How do you package hope?

Mrs. MOTT. We do it every day. When a woman buys a cosmetic product she feels that it is going to beautify her in some way and that is hope.

Mr. MACDONALD. In some cases I am sure you are right.

Mr. Jarman?

Mr. JARMAN. Yes, I have one question about an area of pricing that I would like to have a comment on. You mentioned that women purchasers oftentimes seek out the "half price" or "cents off" promotion sale. How can the manufacturer, with the printing on the bottle of perfume, or the package, have a price as a promotional feature when it can't control the price at the retail level?

Mrs. MOTT. I don't understand your question. You mean how can it afford to be sold at this price?

Mr. JARMAN. What justification there is for your company as the manufacturer showing a half price on the box if you can't control what the price is going to be at retail level.

If it is entirely up to the store itself whether it sells a bottle of perfume at \$5 or \$5.50, you can't as the manufacturer guarantee what his price is going to be.

Mrs. MOTT. Usually what will happen in this kind of situation is that an item which is perhaps overinventoried or which will sell a larger quantity in a certain season will be put aside and they will run a carton and on the carton will be written "half price."

The store really has no control over this. The retail store must sell for what the carton or the sticker on the carton says. These get to be regular practices.

Women look forward to, oh, let us say every spring having certain companies produce dollar summer colognes, let us say, which fragrances in other seasons would sell for \$2, and women look for just that particular area, and the stores sell that much more that they wouldn't want to display it at regular price.

Mr. JARMAN. Don't you have instances where your company advertises a promotional approach of that sort where the retailer has the decision in his own hands as to what he will actually sell it for on the market?

Mrs. MOTT. I don't really think so because I think that the retailer can sell so much more and take so much more advantage of the adver-



tising that it would be detrimental to his own sales to sell it at the regular price when everybody around him was selling it at an advertised special.

Mr. ADAMS. Will the gentleman yield?

Mr. JARMAN. Yes, I will yield.

Mr. ADAMS. What is it half of?

Mrs. MOTT. The price for which it normally sells.

Mr. ADAMS. And what is the price for which it normally sells?

Mrs. MOTT. The price that is established by the manufacturer as a result of his cost and markup.

Mr. ADAMS. Well, what Mr. Jarman is asking, and I was going to ask the same thing and that is why I asked him to yield, is that you go in a store, for example, and they will either put two packages together or it will say "cents off" or it will say "half price" and what we are asking is, Is there no established price and what is to prevent anyone in the retail area setting a two-thirds price, three-quarters price, or half plus 5 cents?

In other words, it really is half of no established price. It is cents off no established price, so therefore it is just a gimmick, isn't it?

Mr. HOLLOWAY. May I help?

Mr. ADAMS. It is Mr. Jarman's time, but I thank you for letting me inquire.

Mr. HOLLOWAY. I think that, as Mrs. Mott was saying, if the manufacturer puts on the package a special half price deal, and many of them do during the course of the year, and in the event they get overinventoried, or some of them on an annual basis, I know my own secretary looks forward to some of these things. She deliberately goes to the store to buy them at that time.

She knows what the price has been of that item all along. If you can't control the retailer from a legal standpoint, you can sure control him from a practical standpoint. If he doesn't actually reduce that price to half of what he had been selling it for that customer is going to walk out on him, and he is getting the advantage of the reduction in price himself from the manufacturer and therefore it is to his advantage to go along with the deal all the time.

Mr. JARMAN. Are you saying that the customer actually knows or remembers the price of that item well enough to know whether it is a two-thirds price or one-third price?

Mr. HOLLOWAY. She can see it advertised in the newspapers and if she hadn't been in the last week to buy a bottle of Guerlain or Chanel perfume, she can see it advertised in the newspapers regularly and if you are querying whether there are chances of variations I would have to say "Yes", but those chances of variations are minor in comparison to the full value of these things, both to the consumer, the retailer, and the manufacturer.

Mr. JARMAN. I will finish, Mr. Chairman, by just saying this. The concern I have in my own mind is that if the manufacturer cannot guarantee to the consumer, and he can't because the retailer sets the price, that the product on which he puts the label "half price" or "cents off" is going to sell for that to the consumer, then I am troubled by the concern that this really would come under the heading of misleading and deceptive advertising to the public.

**Mr. HOLLOWAY.** I don't think so. The retailer, by putting on the shelf the sale of what is half priced, is the one that is doing the misleading there. Perhaps what you are saying is that the manufacturer may have encouraged him to do it, but the retailer has the control of what his price was last week and if the package says "half price" this week he has control of that, too.

However, it is right there for the public to see and if he doesn't follow it then he is the one making the deception.

**Mr. MACDONALD.** The time of the gentleman has expired.

**Mr. Nelsen.**

**Mr. NELSEN.** Mr. Chairman, I want to compliment Mr. Jarman on his question and it troubled me a little bit in the previous witness' testimony, where it is suggested there be a price comparison, if in all cases the manufacturer does not put the price on, which I am sure most of them don't in other products.

It is stamped on in the grocery store, so it would be pretty hard to effect the result that some might like to attain, and my only comment as to the witness today is I would suggest, Mr. Chairman, the witnesses are becoming much more attractive than some we have had before.

Thank you.

**Mr. MACDONALD.** Mr. Dingell?

**Mr. DINGELL.** Thank you, Mr. Chairman.

You indicated, m'am, in your statement at the top of page 3 that you were greatly concerned with the following language, which is section 5(c), page 5 of the bill:

Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

and then—

establish and define standards for characterizing the size of a package—

and then—

define the net quantity of any product—

and—

regulate the placement upon any package containing any product, or upon any label affixed to such product—

and so forth, and then (4) to require—

information with respect to the ingredients and composition of any consumer commodity—

and (5)—

prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof.

Now, you indicate that this is a matter of particular concern to the cosmetic industry?

**Mrs. MORR.** Yes, it is. For one thing it concerns the design element of the package considerably. With a small esthetic package were we to need all of this information on our package we wouldn't have very much room for design.

Mr. DINGELL. All right. But you are aware that this happening and the issuance of these regulations can only be triggered by the promulgating authority determining that regulations "are necessary to prevent the deception of consumers or to facilitate price comparison—by any consumer—as to any consumer commodity"; in other words, only where he finds that there is deception or where it is necessary to facilitate price comparisons.

This is the only thing in which you might wish to consult with your counsel. This is the only event in which that can take place.

Mr. HOLLOWAY. Mr. Dingell, may I try to help?

Mr. DINGELL. Certainly.

Mr. HOLLOWAY. First, I think, if I recall, you read down two or three of these subparagraphs. One of them was paragraph (4) on the information on the label with respect to composition of ingredient. Should I speak to that first or the packaging, (5)?

Mr. DINGELL. All right. Let us concede that for the sake of the argument, but you will notice there that that provides for protection of proprietary trade secrets, which is obviously something with which your industry is greatly concerned?

Mr. HOLLOWAY. Yes.

Mr. DINGELL. In addition to that, it says that the requirements shall be consistent with the Food, Drug, and Cosmetic Act as amended. That act, I am sure you know, provides for an abundance of protection again for trade secrets and matters of this kind.

Now, getting back to that, as I read the statement here, you are concerned about regulations which would be directed at preventing deception of consumers or which would deny the consumer the opportunity to make intelligent price comparisons.

Mr. HOLLOWAY. Mr. Dingell, I went over the record quite thoroughly in the Judiciary Committee and the Senate Commerce Committee listened to the proponents of the bill at this table. I have not yet heard one of them explain what they mean by "information with respect to ingredients and composition of any consumer commodity."

The only thing that was said in the report, looking at the legislative history on it as is set forth in Mrs. Mott's statement which says:

Subsection 5(c) (4) authorizes the agencies to require that information with respect to the ingredients and composition of any consumer commodity be placed on packages containing that commodity. Here the committee is primarily concerned with the ability of consumers to make price comparisons among competing products with varying proportions of active or costly ingredients.

So far as we are concerned this matter of confusing words of art like active leaves us where we don't know where we are.

Mr. DINGELL. Is that your principal objection then with regard to section 5?

Mr. HOLLOWAY. My principal concern with paragraph (4), section 5, is you send down words, and I respectfully submit, sir, that you are going to be legislating this paragraph in a vacuum. You send it downtown, and somebody is going to say you had something in mind, what was it? Then we are going to start having problems.

Mr. DINGELL. This committee is not going to lightly report out legislation with language undefined or unclear in this Congress.

But what I am asking you is 5(c) (4), the principal objection which you assert?

Mr. HOLLOWAY. If I have to grade them, this is the principal objection; yes.

Mr. DINGELL. And you don't have any objection to the balance of that section?

Mr. HOLLOWAY. Oh, yes, I do.

Mr. DINGELL. What is your objection?

Mr. HOLLOWAY. Take the next one, 5. And by the way—

Mr. DINGELL. Let us see. You studied this bill rather carefully, did you not?

Mr. HOLLOWAY. I have been over it quite thoroughly.

Mr. DINGELL. Are you aware of the fact that this bill provides specific exemptions for certain small size packages? Am I correct?

Mr. HOLLOWAY. Only in one area, not in this area, you—the small package is still subject to everything that is in paragraph 5(c) (1), (2)—well, the serving doesn't make any difference to this industry, of course—(3), (4), and (5). The only thing you have got taking out of the small packages is in your subparagraph (c) which has to do with this when it says you cannot "establish any weight or measure in any amount less than 2 ounces."

This is a very small area that we are talking about.

Mr. DINGELL. Most of the products that your industry deals with, though, are in packages of less than 2 ounces, are they not?

Mr. HOLLOWAY. No; I wouldn't say that. I don't know the proportions. Lots of them are 3 ounces, 4 ounces, 1 pound.

Mr. DINGELL. You don't manufacture 2-pound blocks of lipstick?

Mr. HOLLOWAY. No, sir; but we manufacture 8-ounce bottles of cologne.

Mr. MACDONALD. I am sorry, but the time of the gentleman has expired.

Mr. Kornegay.

Mr. KORNEGAY. Mr. Chairman, I have no questions.

I would like to thank the witnesses for coming and giving us the benefit of their testimony.

Mr. MACDONALD. Thank you.

Mr. Satterfield.

Mr. SATTERFIELD. No questions.

Mr. MACDONALD. I just have one, Counsel.

If I understood correctly the testimony it would seem to me that the antitrust laws in your field must be different than in other areas?

Mr. HOLLOWAY. I doubt that.

Mr. MACDONALD. It just surprised me to hear that the manufacturer can tell the retailer what they have to sell a product for.

Mr. HOLLOWAY. I don't believe that I made that statement, sir.

Mr. MACDONALD. No, you didn't, but it was made and I just thought we ought to clear up the record.

Mr. HOLLOWAY. I think Mrs. Mott made it in the area that when the manufacturer puts something on a bottle that the retailer from a practical standpoint must reduce prices accordingly or he himself is in trouble.

Mr. MACDONALD. Then actually the thrust, as I understood, of Mr. Jarman's and Mr. Adams' questions went to half off of what?

Mrs. MOTT. May I say something?

Mr. MACDONALD. Yes, ma'am.

Mrs. MOTT. We are in a greatly advertised industry. Almost every product that sells to any extent is advertised regularly and prices are usually advertised with the product. Women are very aware of what a particular brand sells for.

Mr. MACDONALD. I know one woman that isn't, but I will yield to Mr. Adams.

Mr. ADAMS. The advertising that takes place on particular products in the cosmetic line you will agree is generally specialty advertising indicating that you are going to get a good price on that particular item, is it not?

Mrs. MOTT. Oh, no, sir.

Mr. ADAMS. You look in the newspaper and you see a series of ads that come down and they will say these today, bang, bang, bang, bang. These are all special, aren't they?

Mrs. MOTT. I am not talking about specials. I am talking about a specific product.

Mr. ADAMS. All right. Tell me this.

Does the price, for example, on lipstick, deodorant, lotions, and shampoos vary from year to year? It has been going up every year for about 5 years, hasn't it, a cent or two a year.

Mrs. MOTT. I suppose in relation to everything else going up, yes.

Mr. ADAMS. Here the price of each one of these products is basic, is it not? In other words, if you bought X deodorant a year ago and you buy X deodorant today there is a difference because of the cost of ingredients. There has been a difference in price without any relationship to "cents off" or anything else.

Mrs. MOTT. Yes, but these prices have been advertised and these people are aware of it.

Mr. ADAMS. I believe you mentioned you worked for Revlon for a while; is that correct?

Mrs. MOTT. Yes.

Mr. ADAMS. During any period of time that you were there did the price of Revlon lipstick increase? I think you were there 10 years.

Mrs. MOTT. I was there for 6 years and I think I can safely say that it did not increase except in an area where perhaps we used a different or more elaborate lipstick case.

Mr. ADAMS. All right, but all of these things, elaborate case, ingredients, and so on, can cause the price to change over a period of time?

Mrs. MOTT. Yes.

Mr. ADAMS. Now, you say it is in advertising. Where is the standardized price in Revlon lipstick advertising?

Mrs. MOTT. I think in any national magazine.

Mr. ADAMS. So a national magazine will say what? That this tube of lipstick will cost you—I don't see those ads. All I see is the beautiful girl with the lipstick and she is looking at you like that and all of this sort of thing.

I didn't see any place in those ads, but you say there is one that says—

Mrs. MOTT. With all due respect, there is the hope Mr. Macdonald was talking about before and women do notice that, yes.

**Mr. ADAMS.** You mean in that ad someplace there is a price?

**Mrs. MOTT.** Yes, sir.

**Mr. ADAMS.** I have never seen a nationally advertised price of any cosmetic or lipstick in a national magazine, but I am asking strictly for information. You tell me that someplace in that ad it will say that this lipstick is worth \$1. I would be (1) terribly surprised, (2) impressed, and (3) I am glad to get the information.

**Mrs. MOTT.** I think you will find it is usually "Found at your nearest department store" or that kind of thing.

**Mr. ADAMS.** You also agree that all of the present supermarkets that carry products, and I know they don't carry a number of them, and chain drugstores will without exception vary that national price and sell a certain number of cents below it because nearly all of their items will sell below, comparable to other store prices, so that you have a flexible and differing price in the supermarket and in the major drugstore.

Now, when you come in, as Mr. Macdonald said, you see "half price" or "5 cents off." Is it still your testimony that the housewife knows the price of that item, knows what she bought it for before, and now knows exactly that she is getting half off?

**Mrs. MOTT.** I think for the most part, yes.

**Mr. ADAMS.** When she reads the ad in the paper that says X cosmetics 79 cents, 62 cents, 54 cents, which are specialties for that week, you believe that she still knows that there is a fixed selling price.

The ad she knows is not the price. Then the half price that she goes in to get it for applies to a standard rather than the specialty ad that she has seen?

**Mrs. MOTT.** I will say to a brand extent. Women in cosmetics particularly will stay with the brand. They will be very loyal to a brand because they sometimes become confused as to complementary colors in somebody else's line and she buys one brand. She will know the difference in price in one area over the other or what she expects in a discount store, because she is serving herself, whether or not it is cents off.

So she is probably getting a better price. As far as her buying the strange brand is concerned, I will go along with your statement.

**Mr. ADAMS.** In other words, when you get into the off brands she, well, in effect pays her money and takes her chances as to whether or not she is getting either a comparable price or cents off or half price or any of these because there are no standards.

By standard I don't mean an absolute listing of beeswax and all these things cost this much and therefore you get that, but I mean that she has any real knowledge of whether or not she is getting a price benefit when it says on the container that she is.

**Mr. MACDONALD.** I think I will bang the gavel on that.

**Mr. ADAMS.** I have no further questions. I appreciate the witness being here. I want to compliment the clerk on the quality of the witness today.

**Mr. HOLLOWAY.** Mr. Macdonald, I suppose you are about to close. May I have just 2 minutes on this trade secret things?

**Mr. MACDONALD.** Indeed.

Mr. HOLLOWAY. First, the word "composition" has been thrown around a little bit by the committee members as though the term didn't mean formula. I would have grave doubts that if this went downtown with the word "composition" in it that it would not be considered as permitting the requirement of formula, either qualitative or quantitative. This may even be by some reference to a manufacturing process or to what not only went in, but what comes out when you mix the chemicals together—you may get different compositions from that. If there is no intent to permit FDA to require formula on packages, I hope you will make that clear.

Second, and getting over to the trade secret thing, as I understand the way this thing will operate, the Food and Drug Administration will make an announcement in the Federal Register that it is about to do something with respect to a certain line of products and put their proposition in there and then industry has an opportunity to come in and be heard.

Now, the Holloway Cosmetic Co. comes in and the Macdonald Cosmetic Co. comes in and the Adams and the Kornegay Cosmetic Cos. all come in. I don't know how in the world you are going to prove that you have a trade secret unless you tell them what it is.

None of these hearings are in camera. They have to be disclosed to prove your point. And I just don't see any real protection of this trade secret thing at all and it is very well to send something downtown along this line hopefully that what the agency will do or Dr. Goddard will do about it—

Mr. MACDONALD. May I just ask you a question for my own information?

Are there many trade secrets in the cosmetic business? It seems to me that they are pretty much the same.

Mr. HOLLOWAY. I have been working with them for about 15 years. If you go and talk to perfume manufacturers about their perfume or what is in it, sir, you are going to have one of the darnedest court fights you ever saw. He is not going to tell you for a minute what is in that perfume.

Mr. MACDONALD. He can tell you what is in it, but it is the question of ingredients. Isn't that about it, how much of what? All perfumes more or less are made out of the same stuff, aren't they? Isn't it a question of mixtures?

Mr. HOLLOWAY. There may be 150 ingredients in one little bottle of perfume. True, it may say that it is essence oils or it is the fragrance of a particular flower that is grown in Alsace or some province of France—

Mr. MACDONALD. Grasse, yes.

Mr. HOLLOWAY (continuing). But the composition of them, putting them together, is what is the important thing. Right now and on that very line, if the chairman please, the Food and Drug Administration under the direction of Dr. Goddard is having his scientists meet with the scientists in this industry in which we are working very hard to get together to try to make arrangements to make sure that we have safe cosmetics.

If you start putting things down here which say that cosmetic manufacturers have to list ingredients on packages and explain, as the

Senate did, the requirements in terms of "active ingredients," we don't know where we are again and this is going to interfere with this dialog with respect to safety that is going on at FDA:

I just urge you to at least find out what the proponents are talking about here because we don't know, but the words they are using are disturbing to this industry.

Mr. MACDONALD. Thank you very much.

The committee will stand adjourned until Tuesday at 10 a.m.

(Whereupon, at 12:28 p.m. the hearing was recessed to reconvene, Tuesday, August 23, 1966, at 10 a.m.)



## FAIR PACKAGING AND LABELING

---

TUESDAY, AUGUST 23, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

Mr. FRIEDEL (presiding). The meeting will now come to order.

This is a continuation of the fair packaging and labeling bills and our first witness will be Mr. Lyle C. Roll, of the Kellogg Co.

**STATEMENT OF LYLE C. ROLL, CHAIRMAN OF THE BOARD AND  
PRESIDENT OF THE KELLOGG CO., OF BATTLE CREEK, MICH.;  
ACCOMPANIED BY NORMAN BRISTOL, GENERAL COUNSEL AND  
SECRETARY**

Mr. ROLL. My name is Lyle C. Roll and I am president and chairman of the board of the Kellogg Co., and I have with me Mr. Norman Bristol, general counsel and secretary of our company.

As many of you know, the Kellogg Co. manufactures cereal products. Our company has 4 plants in the United States, and 17 plants in other parts of the world.

We process and sell approximately 1 billion pounds of cereals per year in about 150 countries. Our revenue is derived chiefly from the sale of ready-to-eat cereals.

I am here today to express my concern about the fair packaging and labeling bill—H.R. 15440—which is now before the House Committee on Interstate and Foreign Commerce.

From the time the first packaging control bill was introduced in the Senate some years ago, Kellogg Co. has been strongly opposed. We opposed the original bill because of the adverse effect it would have on the food industry as a whole, and our company, in particular.

We also opposed it because such drastic Federal controls are an outgrowth of a philosophy which is very disturbing to us—one which distinctly encroaches upon the fundamental principles which have stimulated the growth of our economy and allowed American citizens the freedom to enjoy the highest standard of living experienced anywhere in the world.

Objections voiced by our company and others in the food industry are already on record. Parallel objections to legislation which hampers commerce and stifles competition can also be found in statements made by some of the leading proponents and supporters of the free enterprise system.

Our present objections are stronger than they were originally, for in the years which have ensued since the "fair packaging" banner was first waved before the eyes of the voters under the mask of "consumer protection," we have come to see that the present bill is not so harmless as it seemed at first glance.

Under the guise of helping consumers, the proposed legislation would give a Government official the power to decide which packages should be marketed and, in many instances, at a cost higher than is required when consumers have the right to make this decision themselves.

Our company is consumer oriented and we think most successful marketing companies are. I mean by this that our company is interested primarily in what consumers want or are likely to want. We make serious studies of their wants and buying habits, because their continued enthusiasm for our products is necessary for our survival. We know that the millions of consumers who buy our products are highly perceptive and eager to buy products in the quantities which best serve their needs.

It is disturbing to me to hear it said that our customers are being confused and deceived by labels. They should not be and they are not; yet the proponents of the mislabeled and so often misquoted truth-in-packaging bill seem to think that the average housewife is so gullible that she is unable to understand what kind of a purchase she has made even though she may have been purchasing the product week in and week out during the past.

I believe truth in packaging is an essential part of any marketing program. I am not alone in this. There must be thousands of salesmen who would be willing to testify that any form of deceptive labeling is bad business and will not build repeat sales.

Our company makes every effort to package top-quality products in the most convenient and economical containers we can design. We present our packages to consumers in an honest forthright manner by pointing out exactly what they are getting when they buy our products. This approach is basic with us. It always has been.

If my appearance here in opposition to the fair packaging and labeling bill—the so-called truth-in-packaging bill—seems inconsistent with my determination to serve the best interests of consumers, believe me, it is not. I am here to voice objection to a bill which has been presold to many people by a title—a label—which leads them to conjure up thoughts of goodness and light, but which, in truth is something altogether different.

Let us consider what this bill really is. To me—and those who have devoted long hours to a study of its implications—this is a Federal packaging control bill—one that will boomerang. It is a bill, which if enacted, will boost the prices consumers pay for food. The items principally affected will be groceries and—to my immediate concern—our products.

I call this bill a dangerous, inflationary bill because the standardizing of products by weights is a departure from good processing and packaging principles; a departure which will require costly changeovers.

In this day and age food products are purchased by the package more often than by the pound. They are purchased to serve the

family's needs and preferences—not simply because of the weight marked on the package—and not always or necessarily because they are the cheapest.

Competition encourages food processors to upgrade their products and packages whenever it is economically feasible. At Kellogg's we adhere to high-quality standards and package our products in attractive containers with as many conveniences as we can to keep our products fresh, nourishing, and tasty. To keep costs in line, we try to utilize the same packaging machinery for as many products as we can.

What would happen if we had to change our present packaging procedures?

I can point out the comparative packaging costs of two of our subsidiary companies overseas—one which operates under government packaging control regulations and another which does not.

Our Mexican subsidiary operates without regulatory control of package weights, and in Mexico they package nine different product sizes in three different package sizes.

In South Africa, where cereal must be packed in packages of prescribed net weights, our subsidiary has to go to 6 different package sizes to be able to market 12 different product sizes. To achieve this result in South Africa we even have to engage in slack filling to an extent we consider undesirable. Because of the larger number of package sizes used in the regulated South African plant, it takes about 51 percent more packing labor than in the Mexican plant to pack a given number of packages even though the two plants have comparable equipment and volume.

At the moment, however, I believe you will be more interested in hearing about a study we conducted earlier this year to gage the effects of packaging control legislation on our operations in the United States.

In authorizing this study, I asked a staff of well-qualified production managers, market research men, and cost accountants to determine to the best of their ability what it would cost our company to conform to the standardization provisions of the packaging control bill, what effect the bill would eventually have on consumer prices, and what effect it would have on our operations.

Here is a summary of the report they presented:

1. We would have to install considerable additional equipment in our plants. Capital expenditures for this purpose would run in excess of \$8 million.

2. We would incur increased operating costs in excess of \$3 million annually.

3. This would increase our manufacturing costs by approximately 4.2 percent.

4. A reduction in the net weight of average-size packages would increase the price to consumers by approximately 1.6 percent per ounce.

5. These added costs would result in an increase of approximately 5.7 percent in the prices consumers will have to pay for cereal.

6. The increased prices that consumers will have to pay will create obstacles to the successful maintenance of our markets and will hamper the growth of our business.

Although these figures apply to our products, I believe that the standardization provisions of this bill will have much the same effect on other types of products and in some cases it may be even more drastic.

How did we arrive at our figures? We proceeded on the assumption—based on the recorded views of the proponents of packaging-control legislation—that packages of cereal would be standardized at net weights of 8 and 16 ounces.

To pack our products in 8- and 16-ounce packages—while complying with existing Federal regulations controlling slack-fill and seeing that they are packed properly—it would be necessary to have packages of 29 different sizes instead of the 11 which we have now.

To pack cereals in packages weighing 8 and 16 ounces we would have to purchase 14 additional packing lines, 1 printing press, 2 cutting presses, and 1 of our printing presses would have to be rebuilt.

We would also have to provide more building space to house the additional equipment and more warehouse space to handle more complex inventory problems. Our estimate of these capital costs at February prices is \$8,397,000.

The necessary expansion of operations would require additional labor costs for packaging line changes and to compensate for the loss in crew efficiency as well as makeready changes on printing and cutting presses. Our estimate of our annual increase in operating costs is \$3,076,000.

Without considering other ramifications, these increased costs represent an increase in production costs of approximately 2½ percent.

As a part of our study, the market research staff delved into an area which we believe had not been considered seriously enough and that is the effect that standardizing packages by weight will have on consumer purchases. It is apparent that everyone has been assuming that pound sales would remain constant and package sales would adjust themselves to constant pound sales.

Our experience indicates that this is not true.

Our business was built on an honest effort to give consumers the products they want in the sizes they want. This is based on our experience and extensive studies of consumer preferences, not what we arbitrarily think they should have.

In developing packages of suitable size, we try to determine which package sizes various consumer groups want and we try to pick the package sizes that will permit economies in production.

To develop packages for our products we consider many variables including the size of packages in relation to the likely size of the pantry shelf—the length of time packages will remain open on the pantry shelf—whether there is enough cereal in a package to meet the needs of the family from one shopping trip to the next—and the expected retail price at which the package will be sold.

Our market research men projected sales trends for four of our leading products, assuming that our products would have to be marketed in 8- and 16-ounce packages instead of their present packages. From these predictions we analyzed the effects on our costs and consumer prices.

To make this more meaningful, permit me to give you an example of the effect of package purchases on pound sales.

Our corn flakes are sold in 8-, 12-, and 18-ounce packages. If we had only 8- and 16-ounce packages, a decline in total pound sales would result principally for two reasons. First, the present buyers of the 18-ounce package would shift to the 16-ounce package. Also, if the purchasers of our 12-ounce package could no longer buy that package, an estimated 75 percent of them would begin purchasing the 8-ounce package, while only 25 percent would switch to the larger size.

Why? Because the larger package contains more cereal than many families need during a week's time and because the price of the larger package would have to rise above a price barrier which many consumers are unwilling to cross.

Our study shows that our four most popular products would suffer—because of standardization—a reduction in sales varying from 5.5 to 12.5 percent—a factor which in itself would increase costs to consumers by approximately 1.7 percent in addition to the 2½-percent increase previously discussed.

There is one more cost increase that would have to be borne by the consumers. The larger packages of our products are sold by us and usually by the grocer at a lower price per ounce. Standardizing to 8- and 16-ounce packages would reduce number of ounces per package most frequently bought by our customers.

Therefore, they would have to pay more per ounce. The resulting cost to them, in that instance, would be approximately 1.6 percent per ounce. This would 1.6 percent per ounce plus the other cost increases which I have already mentioned.

These costs added together would result in a 5.7-percent increase in costs. Similar cost increases can be expected in connection with the production and distribution of other grocery products now available to the American public.

Having studied the probable effects of the proposed legislation very carefully, I am forced to say that the fair packaging and labeling bill—S. 985, H.R. 15440—is a packaging control bill—a bill that will increase the costs and prices of many food products at the very time when the administration seems to be giving consideration to measures to curb inflation.

The fair packaging and labeling bill now being pushed, supposedly in the interest of consumers, will boomerang against the consumers. It will hurt consumers, industry, and the national economy.

I have the best interests of our customers in mind in opposing H.R. 15440. I urge you as dedicated representatives of the people of the United States of America to give your most serious consideration to the adverse effects the proposed legislation would have not only upon our company, but the consumers we wish to serve.

Thank you, very much, sir.

Mr. MACKAY (presiding). Thank you very much.

Mr. Dingell, do you have any questions?

Mr. DINGELL. I have no questions, Mr. Chairman.

Mr. MACKAY. Mr. Younger?

Mr. YOUNGER. I want to compliment Mr. Roll for his very fine presentation especially in connection with the cost figures, which we have been trying to get into this record.

There is one phase that has come up a number of times, which is that the package of corn flakes, is down that far, or down from the top of the package and the reasons for it.

I think as long as you are here, you might get into the record the reasons why that happens.

Mr. ROLL. Mr. Younger, our packages are all sold by net weight. When filling our packages, on the packing line, they are all filled to what we call the score line, regardless of how much it is over the net weight. Then the food is shaken down over shakers so that we have enough room to seal the paper and to tuck the paper over.

The case is weighed at the end of the packing line, and if it fails to come up to the net weight it is rejected and repacked.

Now, paper in different climatic conditions will respond to conditions and it will bulge, and packages that we examine at home that have been shipped to California and back, we are always able to get the food back in the package to its original state. It will, though, on railroad cars and trucks, have a tendency to shake down. But the net weight that we have on the outside is still in that package.

Mr. YOUNGER. Well, as to this matter of sealing the inner package, you have to have a certain space for that?

Mr. ROLL. Yes sir. We try to shake it down. After we fill the food to the score line on the package, and it goes over a shaker, we need about another inch, because the seal on the package is about a half an inch from the top. This, we fold over and tuck down in the package, so the cereal is fresh when it arrives at the consumer's home.

Mr. YOUNGER. If you had the package full right up to the top of the outer casing, you wouldn't be able to seal it?

Mr. ROLL. No; we wouldn't. It would not seal and would allow the air to get in. Also, in processing different grains, any grain, say corn, for instance, will produce the same product—corn flakes, for instance—of different density at different times. Some will make heavy food, and others will make light food. Therefore, the fill in the package will again vary.

Mr. YOUNGER. Were you here when Mrs. Peterson testified?

Mr. ROLL. No; I am sorry.

Mr. YOUNGER. Several witnesses have mentioned this slack-fill and all of the time they complain about here is the package and the corn flakes are down that far or down further, without giving consideration as to why that has to take place in order to seal the inner packing, and also the transportation.

Mr. ROLL. I might add that moisture in the air here in Washington will cause the package to bulge more than it will in Denver.

Mr. YOUNGER. Just like it does to individuals?

Mr. ROLL. I am sure that that is true.

Mr. MACKAY. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. I was at a grocery store last night and noticed a sign which read "4 for 98 cents." So I bought four. I won't mention the product, but it was four cans of canned food. I went over the cash register slip, but I did not get them for 98 cents. The full price was added there. Now, obviously, the sign that was displayed was intended to give me the impression that I would get four of this assortment for 98 cents. But there was no such price on the ticket when I paid the bill.

Now, this, of course, is a deception but this cannot be charged to the canner and it cannot be charged to the packager of food. This was strictly in the area of merchandising the product in the store itself.

Of course, that is not covered in the bill. But I think some of the deception that seems to be under attack is to some degree by labeling of the sales technique within the store itself.

Would you have any comment to make on that?

Mr. ROLL. Well, Mr. Nelsen, we are in the manufacturing business and the retailers are all fine customers of ours, through the wholesalers.

Mr. NELSEN. I understand.

Mr. ROLL. And since I am not familiar with the case, I think that I would like to be excused.

Mr. NELSEN. That is a very good answer. I would have answered it the same way.

Mr. YOUNGER. It has been suggested a number of times that we include the retailer in this bill, or in this legislation. Do you think that that would be a good thing?

Mr. ROLL. I am not in charge of writing legislation, and I think that I would like to be excused on that, also.

Mr. YOUNGER. You would like to be recorded as against the legislation?

Mr. ROLL. I am absolutely against it.

Mr. NELSEN. I might further add, Mr. Chairman, that one of the disturbing things to me about this legislation is the fact that I have received personal communications from some processors in opposition to the bill. Yet, they have in no case indicated their position by testimony for the record.

It seems to me that we experience more and more of this in legislation where people that are in responsible business positions are reluctant to speak up in opposition to legislative proposals. It becomes obvious to me that the Government in many ways suppresses a declaration of position relative to legislation because of the various ways that the Government can move in and harass business.

To me this is a very lamentable situation. I have no further questions, Mr. Chairman.

Mr. MACKAY. I would like to ask you to comment on sections 3 and 4. We have had a battery of witnesses come in here and talk about section 5 without any reference to sections 3 and 4 which, of course, do not have to do with packaging but have to do with labeling. I want to ask you if you have examined those sections and whether there is anything objectionable to either of those sections.

Mr. ROLL. I have examined them but I have with me our general counsel. He has much broader knowledge of law than I do, and if I may turn that over to him I would like to.

Mr. MACKAY. All right.

Mr. BRISTOL. Well, I think that the most obvious characteristic of sections 3 and 4—I am speaking now about the food field only—are well covered in the Federal Food, Drug, and Cosmetic Act, principally section 403 of the act.

Mr. MACKAY. Do you see that this adds anything to existing law?

Mr. BRISTOL. There are differences, certainly. For instance, there is the requirement that the net weight statement be parallel to the

bottom. But I think that in summary the field is adequately regulated in section 403 of the Food, Drug, and Cosmetic Act.

Mr. MACKAY. Now, this is the mandatory part of this bill, and all of the testimony I have heard, as I say, has been mostly about section 5. A common assumption of most witnesses has been that the promulgating authority would immediately move into the standardization of all packaging. We have had much testimony about the cost of standardization. But as I read the law it says that the promulgating authority is authorized to order standardization of packaging only after he finds that the method of packaging of a given commodity is deceptive or creates confusion.

Mr. BRISTOL. I think the test is not deception. I think it is in section 5, or section 5(d), which is the important one.

Mr. MACKAY. Will you look at the top of page 6? It says they are necessary to prevent deception or confusion of consumers, and so on.

Mr. BRISTOL. Yes, sir; that is the test, for arriving at the following regulations on the subjects that follow.

Mr. MACKAY. Really, what your testimony and the burden of other testimony is that there is nothing deceptive or confusing about present packaging.

Mr. BRISTOL. There is nothing deceptive that isn't already illegal in the food field under section 403 or the other parts of the Food and Drug Act.

Mr. MACKAY. Let me put it this way: It seems to me that under a reasonable construction of this act by a competent administrator of good character and intelligence, this could logically be applied to a very small percentage of the commodities that you find in the stores today.

I don't find much deception or confusion. I have been having a hard time finding illustrations out of my own experience that would support this test.

Mr. BRISTOL. Yes, sir; but the test in these, in this bill, is not deception.

Mr. MACKAY. Or ease of price comparisons?

Mr. BRISTOL. It is price comparisons.

Mr. MACKAY. I don't have much difficulty in making these comparisons. I have asked my wife, and she said in a few lines she does have some difficulty.

Do you think that the number of servings should be permitted as a selling point when no two people have exactly the same appetite?

Mr. BRISTOL. That is difficult for me to answer, sir. We don't sell our products as so many servings so it is difficult for me to state an objection to the provision establishing servings, I don't really know if that is an objectionable section or not, because I don't know what goes into a serving, or establishing a serving.

My wife doesn't seem to have any trouble with serving statements on packages.

Mr. MACKAY. That is a consumer judgment, isn't it, though?

Mr. BRISTOL. Yes, sir.

Mr. MACKAY. What about the cents-off provision?

Mr. ROLL. As far as cents off, our company hasn't used it in this country for many years. But in working in a free enterprise system,



if a new company is entering a market, we believe that they should be able to use a cents-off provision on their packages if they want to give the consumer a better buy to sample their product.

Mr. MACKAY. But they can't even control it, can they, because they sell it to the retailer and not to the consumer?

Mr. ROLL. It is controlled as far as they are concerned.

Mr. MACKAY. But doesn't that often end up as a deception to the buyer?

Mr. ROLL. I would say that in the majority of retail stores I have been in, it is properly marked when it comes through the cashier.

Mr. MACKAY. Mr. Nelsen gave an illustration that seemed to suggest that he had had just the opposite experience.

I have a feeling that maybe there are a couple of points in this bill that have some real merit and if they do have merit we ought to recognize this and cut the rest out of the bill, rather than just brand the whole thing as a bad idea, and I really sincerely suggest that.

Now, what about products of different densities?

Mr. ROLL. We have indicated in our testimony that as far as cereals are concerned, they are not sold by the pound. We try to put them up in the packages, and sizes, that will serve consumers.

From our experience that is the best way to do it and that is the reason we have a range of three sizes of some products, and other products two sizes, and some products, one size.

We spend quite a lot of time studying our packages and how better to serve the consumers to get more business.

Mr. Bristol said he would like to comment on that.

Mr. BRISTOL. There is one problem I have with regard to that section, and I think that I can give you an example on it. We have one product, Croutettes, which is stuffing crouton, spiced bread. As to what a "related product" is, I think there is a very difficult problem with regard to vagueness, but even so this product, Croutettes—we were able to manufacture it more easily because we took one of our cereal sized packages, and packed Croutettes in this dimensional size package which was already the vehicle for a number of cereal products.

We were able to achieve the efficiency even though we were jumping out of what I would consider to be the field, or jumping out for sure, of this field of related products.

I think this related products feature of the bill also doesn't take into account the future products that you may come out with. Maybe they are within the related field, and maybe they are not. But it is difficult to imagine what is going to happen.

Mr. MACKAY. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. I have no questions, Mr. Chairman. I simply would like to say this to Mr. Roll, that I am sorry that I was late getting in here, and I had to attend to another matter this morning, and I couldn't listen to your statement. I am generally familiar with your position from going over your statement.

I understand that you have made a study; is that correct?

Mr. ROLL. Yes, sir.

Mr. KORNEGAY. How lengthy is it?

Mr. ROLL. I did not hear the question.

Mr. KORNEGAY. How lengthy is the report or the study?

Mr. ROLL. Well, it was made as a report on the bill by the most talented production people that we have, with the help of the comptroller, and cost accountants, and with the help of our marketing research men. Altogether it took them about a month to get all of their figures together. At the conclusion of the report, it will cost us not only operating costs but capital costs of about 4.2 percent more to manufacture the same cereals that we would have manufactured under our present packaging sizes.

Mr. KORNEGAY. What, if you have this figure, what would the recurring increase in cost to the consumer be, according to the study you have made?

Mr. ROLL. We would have a capital outlay of \$8 million, and we would have an increased operating cost of 4.2 percent. We would have added approximately 1.6 percent per ounce for packaging increase, and the total cost to the consumers would be approximately 5.8 percent increase in the price of our cereals.

Mr. KORNEGAY. In other words, you are not in a position to absorb that cost but would find it necessary to pass it on to the consumer?

Mr. ROLL. Right now, sir, we are trying to absorb in excess of \$5 million of increased costs in raw materials. Studies are underway now as to how we are going to do that, and if this comes on top of that, there is a point beyond which you can't absorb costs.

Mr. KORNEGAY. You feel it would be necessary then to increase the cost of the products to the consumer?

Mr. ROLL. It would, sir.

Mr. KORNEGAY. Mr. Chairman, I would like to ask unanimous consent that this study which Mr. Roll has had made by the Kellogg Co. be placed in the record.

Mr. MACKAY. Without objection, that will be done.

Mr. KORNEGAY. We certainly appreciate your patience.

Mr. ROLL. We have a summary of the body if you would like to place it in the record, you are welcome to it.

(The document referred to follows:)

**SUMMARY OF A STUDY BY KELLOGG CO., ON EFFECTS OF A REQUIREMENT THAT ALL FAMILY-SIZE CEREAL PACKAGES CONTAIN 8 OR 16 OUNCES NET WEIGHT—FEBRUARY 22, 1966**

In February, 1966 a study of the effect of packaging all cereals in packages of net weights of either eight or sixteen ounces was conducted by the staff of Kellogg Company, Battle Creek, Michigan. Consideration was limited to products and operations of Kellogg Company. The purpose of the study was to determine what effect if any a requirement that family size packages of cereal for resale at retail in packages of net weight of either eight or sixteen ounces would have on the costs and prices of cereal. Excluded from consideration were cereal packages containing less than two ounces.

Selection of eight and sixteen ounces as the required net weight was based on statements by a proponent of the "Fair Labeling and Packaging" bill (S. 985).<sup>1</sup> No studies were made on the effect on cost or prices of any other required net weights. It is believed that the selection of any two other required net weights would have substantially the same effect of increasing costs and prices although it can be expected that the estimated increase in costs and prices resulting from standardized net weights will vary somewhat upward or downward depending on the two required net weights selected.

<sup>1</sup> Hearings before the Committee on Commerce, United States Senate, Eighty-Ninth Congress, First Session, on S. 985 (Serial 89-28), pp. 726-727; Congressional Record p. 4501, 3/10/65; Congressional Record No. 172, 9/24/62.

The findings of the study are summarized as follows:

1. Standardization of package weights would result in a decrease in pound sales which, since unit costs will generally increase as volume decreases, would result in a 1.7% increase in the cost of cereals which will be reflected in increased prices the consumer pays.

2. The larger size packages are offered to consumers at lower prices per ounce of cereal than the smaller size packages of the same cereal. Standardization of package weights will result in a decrease in the average net weight of family size packages purchased at retail.

An increase in the average price the consumer pays as high as 2.7% with a mean increase at 1.6% will result.

3. The standardization of package weights will have an adverse effect on efficient use of packing and printing equipment. Reduction in efficiency will necessitate installation of additional equipment with suitable buildings to accommodate them. The added capital costs are estimated at \$8,397,000.00 not including land, and additional operating costs are estimated at \$3,076,000.00 annually including depreciation. An increase in costs of approximately 2½% will result from this increase in cost of manufacturing which will be reflected in a corresponding increase in the cost of cereals to the consumer.

4. Standardization of package weights will impair or eliminate the projected reductions in distribution costs, of grocery distributing organizations as well as of this Company, obtainable by development of improved methods of handling. A specific example is the development of an optimum pallet load of uniform dimensions. The cost improvements achievable by this method cannot be estimated with any degree of reliability, but it is known that handling and distribution costs are great and the possibility for decrease through development of an optimum uniform pallet load are substantial.

The basis for these conclusions are more fully set forth as follows:

#### 1. COST INCREASE RESULTING FROM VOLUME DECREASE

In order to determine what effect the shift from the present packages marketed to packages complying with a regulation requiring packages of a net weight of either eight or sixteen ounces, the probable sales of the eight and sixteen ounce packages must be predicted. The bald assumption that pound sales of any particular product will be the same as at present if the product is marketed in eight or sixteen ounce packages cannot be made. On the contrary experience shows that a change in package net weight has a decided effect on the total pound sales.

The package and pound sales and expected retail prices by size of each of the four largest volume cereals sold in eight-ounce and sixteen-ounce packages only were predicted. The following are some of the conclusions arrived at over many years of experience and study by the Market Research Division of Kellogg Company on which these predictions are based:

(i) The consumer buys cereal by the package, not by the pound or the ounce. She buys an assortment of cereals, usually those of more than one manufacturer, and her selections are those packages which meet her needs for her family and fall within a price range which meets her expectations.

(ii) There are retail price barriers over which consumers believe prices are too high for a package of cereal. These barriers will vary with time, from one area of the country to another, with the type of product and with various other factors. These price barriers are such that a large package which is priced at retail above the price barrier will not be purchased, even though by reason of its size it is offered at a lower per ounce price than smaller packages of the same cereal.

(iii) The grocery trade generally resells cereal on a percentage mark-up basis, and cost increases will generally be reflected in a comparable percentage increase in the retail price.

For instance in arriving at the prediction as to the purchases of packages of Rice Krispies, the Market Research Division predicted that most or all of the former six-ounce package buyers would become eight-ounce package buyers. This prediction is admittedly questionable and can only be achieved if there are no price barriers between the 24¢ at which the six-ounce package is sold and the 30¢ which is the predicted retail price of the eight-ounce package. It is likely that some consumers will find a price barrier at this point and will shift away from this particular product preference.

The prediction that all buyers of the ten-ounce package will become buyers of the eight-ounce package is reasonably safe. There will be no price barrier to overcome as the predicted price is lower than they have been paying. There is little likelihood that they would select the 16-ounce package since they are at present buying the ten-ounce package in preference to the 13-ounce package which is now available. Experience has shown that in similar reductions of the net weight there is not a corresponding increase in the number of packages purchased. On the contrary the number of packages sold generally stays approximately the same.

Many of the buyers of the 13-ounce package (45% of them) are predicted to become buyers of the eight-ounce package. Faced with the alternative of an eight-ounce package at 30¢ or a 16-ounce package at 54¢ these purchasers will drop to the lower price because they are unwilling to pay the higher price for a package of cereal.

Predicted retail prices are arrived at by interpolation and extrapolation from the present retail prices on the basis of the net weight in ounces, applying the Better Buy principles for larger package sizes observed by Kellogg Company, discussed below.

The predictions as to the other three cereals (Kellogg's Corn Flakes, Kellogg's Frosted Flakes, Kellogg's Special K) are made similarly. A predicted loss of approximately 9.4% of the pound sales of these products is shown by the study.

Spreading of the plant burden (fixed costs) over 90.6% of the 1965 tonnage will result in an increase in the burden costs per pound of cereal which in turn will result in an increase in the retail price of approximately 1.7%.

## 2. PRICE INCREASES RESULTING FROM LOSS OF AVAILABILITY OF THE BETTER BUY IN THE LARGER PACKAGE

The larger packages of the same cereal are generally sold at retail at a lower price per ounce than the smaller packages. Kellogg's prices to the grocery trade are in all cases lower on a per-ounce basis for the larger packages, the per-ounce price being lower for each larger size than the per-ounce price for the next smaller size by from 3.35% to 11.5%, the mean being about 8%. Since cereals are generally resold by the grocery trade on a percentage mark-up basis, the same Better Buy percentages will apply to the retail prices.

The extrapolated and interpolated package prices of eight and sixteen ounce packages of the same four cereals (Kellogg's Corn Flakes, Kellogg's Rice Krispies, Kellogg's Frosted Flakes, and Kellogg's Special K) were applied to the predicted package purchases and compared to the average retail prices and actual package sales (upon which the extrapolated and interpolated package prices and predicted package purchases were based). The comparison showed the following per ounce prices.

Product	Price per ounce		Increase in average price paid resulting from 8- and 16-ounce regulation
	Present	Predicted	
Corn Flakes.....	0.0190	0.0193	Percent 1.6
Rice Krispies.....	.0219	.0223	.7
Frosted Flakes.....	.0258	.0265	2.7
Special K.....	.0385	.0391	1.6

It can readily be seen that the effect on the price the consumer will be paying will be an increase as high as 2.7% with a mean increase on the four products of 1.6%, as a result of the imposition of a regulation requiring net weights of 8 and 16 ounces.

## 3. LOSS OF EQUIPMENT EFFICIENCIES

In the absence of a requirement of standardized package weights, Kellogg Company uses packages of standardized dimensions to package a number of different cereals, almost all of which will contain in the standardized package a

different net weight of cereal because of the difference in bulk densities. For instance in one package of standardized dimensions (111.4 cubic inches) the following net weights of the following products are packed:

<i>Product</i>	<i>Net weight (ounces)</i>
Corn Flakes and Bananas.....	5
Rice Krispies.....	6
Apple Jacks.....	6½
Froot Loops.....	7
Croutettes.....	7
Sugar Stars.....	8
Cocoa Krispies.....	8½
Krumbles.....	9
All-Bran.....	16
Bran Buds.....	18

By optimum use of a number of cartons of standardized dimensions, Kellogg Company is able to limit the cartons used to eleven different dimensional sizes. The use of cartons of standardized dimensional sizes will be greatly limited if the Company is required to standardize on net weights. To package products in only 8-ounce or 16-ounce net weight packages would require use of twenty-nine, instead of the present eleven, dimensional sizes.

The use of a relatively small number of carton size improves packaging line efficiency because a packing line may be used to pack first one cereal and then another cereal in the same size carton without adjustment in the line. This change usually is made at a clean-up period and can be performed with no loss of time. However where the cartons packed on the line are changed from one size to another, the packing line must be adapted to handle a carton of a different dimensional size. Such a change necessitates approximately eight to sixteen hours of down time and 50 to 100 man-hours of mechanical labor to make the change over and tune up the line, and a loss of efficiency results temporarily after the change over. The increased amount of down time and temporary efficiency loss will necessitate the addition of fourteen packing lines to pack the same number of cartons.

A similar loss of efficiency in the operation of printing and cutting presses will result from standardization of cereal packages on a net weight basis. At present nine or twelve cartons are printed on one sheet of carton board with one impression. If all the cartons, which are roughly rectangular, are the same size, that number of cartons can be printed together with a minimum of waste carton board. Carton press down time is kept to a minimum, carton board sheets are kept to a minimum number of sizes keeping inventory costs and purchase prices lower, and the very expensive make-ready required in changing both a printing press and a cutting press from one carton size to another are kept to a minimum.

To print and pack the same number of cartons based on packages, standardized on a net weight basis, additional capital costs of \$8,397,000.00 not including land, and additional operating costs of \$3,076,000.00 including depreciation, will be required to conform to a regulation standardizing net weights. This is equivalent to a 2.5% increase which will result in a comparable increase of price to consumers.

#### 4. IMPAIRMENT OF ABILITY TO REDUCE DISTRIBUTION COSTS

The distribution costs of cereal are known to be high. It is estimated that our annual costs during 1965 of handling and distribution other than actual freight paid are approximately \$4,000,000.00. Handling costs of the purchasing grocery distribution organizations are of comparable magnitude, but it is not known accurately what their costs are. Methods of improving these costs have been under consideration and it is expected that there are substantial possibilities of further cost improvement in the cost of unloading of unitized inter-plant shipments by cutting unloading time in half.

One of the most fruitful possibilities in this area appears to be the development of a pallet load of optimum dimensions. The advantages to be found in such a development are—

- (1) more efficient use of specialized handling equipment specially developed to form and handle pallet loads,

- (ii) complete elimination of pallets, either the usual wood pallets or the somewhat more efficient container board pallets,
- (iii) larger units for accounting purposes,
- (iv) development of comparable improved handling facilities at the receiving dock, and many others.

To achieve the optimum uniform pallet load, the following requirements must be met—

- (i) The dimensions must be compatible with the dimensions of existing and future railroad cars and trucks.
- (ii) The elements of the pallet load—the cases of cereal—must be stacked so that the pallet load will be a relatively cohesive unit.

Development of an optimum uniform pallet load cannot be achieved if the Company is not free to make suitable adjustments in the elements of which the pallet load is made up, specifically the size of the cases making up the load which is in turn dependent on the size of the cereal packages making up the case. Standardization of the carton sizes on a net weight basis will unquestionably limit the ability of the Company to develop an optimum uniform pallet load and may make such a development impossible.

Since the uniform pallet load is still in its initial stages of use, the savings which it may make possible, or more pertinently, the cost savings which standardization on a net weight basis makes impossible, cannot be estimated on a reliable basis.

KELLOGG COMPANY.

Dated: February 22, 1966.

Mr. SPRINGER. You are chairman of the board and president of the Kellogg Co.; is that right?

Mr. ROLL. That is right, sir.

Mr. SPRINGER. Well now, you are getting around to something that we want to know on this committee. Have you been here and heard this testimony?

Mr. ROLL. This is our third day here, sir.

Mr. SPRINGER. Well, that is not enough. You should have heard it all before this, and especially the Government witnesses, and the administration witnesses on this.

They testified as to what they could do, but when I asked them the question about the increased cost, no one had given it a thought, and no one had even gone into the preliminary, to see what they are talking about.

Now finally, you do have in the record here some hard, cold facts on increased costs. I don't know about that. Someone the other day over on the floor said this wasn't a fair labeling packaging bill, but it was a bill to increase consumer's costs.

It would take \$8 million to install additional equipment, in capital outlay; is that right?

Mr. ROLL. That is right.

Mr. SPRINGER. Your increased operating costs would be \$3 million?

Mr. ROLL. Annually.

Mr. SPRINGER. That would be every year?

Mr. ROLL. That is right.

Mr. SPRINGER. This would increase your manufacturing costs by approximately 4.2 percent?

Mr. ROLL. That is right.

Mr. SPRINGER. Is that steady?

Mr. ROLL. That is every year. If we put it all on the consumers, it would mean that we would have to increase our prices 3.7 percent.

Mr. SPRINGER. We certainly don't want to do that. Now, I was interested in what you had to say on page 6 of your statement here,

where in Mexico you have no regulatory controls on package weights, and you have nine different product sizes in three different package sizes.

Mr. ROLL. That is right. That is in a free economy, and free enterprise system.

Mr. SPRINGER. Now, that means that you have only three packages, but you have nine different weights in the packages; is that correct?

Mr. ROLL. That is right.

Mr. SPRINGER. That will save on the number of boxes that you have to manufacture, is that right, the different kinds of boxes you have to manufacture?

Mr. ROLL. The big savings is on the packing labor.

Mr. SPRINGER. Now, you went to South Africa, and in South Africa you have weight control?

Mr. ROLL. Everything has to be in 4, 6, 8, 10, and 12 ounces.

Mr. SPRINGER. It has to be that way.

Mr. ROLL. It is standardized.

Mr. SPRINGER. Now, you said because of the larger number of package sizes it takes 51 percent, that is half again, more packing labor than in the Mexican plant, to pack a given number of packages, even though the two plants have comparable equipment and volume.

Mr. ROLL. That is right. Those are the facts in our records.

Mr. SPRINGER. It is because you have gone to 4 standards, is that right, 8, 10, 12, and 16?

Mr. ROLL. We are forced to operate under the Government regulations, or close up our shop.

Mr. SPRINGER. That is 51 percent more packing labor than the Mexican plant?

Mr. ROLL. That is right.

Mr. SPRINGER. Even though the two plants have comparable equipment and volume?

Mr. ROLL. That is right.

Mr. SPRINGER. You are positive about these figures?

Mr. ROLL. We have them and will show them to you any time you want to see them.

(The following letter was subsequently submitted by the Kellogg Co.):

KELLOGG Co.,  
Battle Creek, Mich., September 9, 1966.

Re H.R. 15440.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: This is our Company's response to your request in Mr. Borchardt's letter of September 1, 1966 for information on the comparative packaging costs of our Mexican and South African plant. We are also having copies of this letter given to Congressmen Springer and Moss who are mentioned in Mr. Borchardt's letter as requesting the information.

Mr. Borchardt's letter contained your request for more information on Mr. Roll's statement to the Committee that our South African subsidiary which is subject to a regulation establishing standardized net weights for cereal packages requires 51% more packing room labor than our Mexican subsidiary, which is not subject to such a regulation, but otherwise operates under comparable conditions.

The study involving the comparison between the South African and Mexican subsidiaries was made in 1965 in preparation for Mr. Roll's testimony before the Senate Commerce Committee on S. 985, which for the purposes of the study included provisions similar to those of H.R. 15440. A copy of Mr. Roll's pre-

pared statement for the Senate Commerce Committee is attached. His testimony and statement are printed at pages 333 through 343 of Hearings before the Committee on Commerce, United States Senate, Eighty-Ninth Congress, First Session, on S. 965 with testimony on this subject at pages 336 and 337.

The requirement that cereal packages be in standardized net weights requires a cereal manufacturer to incur a number of additional costs for many reasons. Some of these are:

1. More different dimensioned size cartons are required and additional mechanical labor is required to adapt packing lines on many more occasions so the lines can be used to pack varying package sizes.

2. Packages are designed not with the primary objectives of meeting consumer needs and conforming to efficient packing methods, but with the primary objectives of achieving the required net weight. As a result many packages may be awkward and inefficient in design and may require more packing material than necessary and may be of such design that waste is excessive.

3. The complications introduced by a larger number of unique package sizes causes the loss of opportunities for increased efficiencies.

4. Packing lines are out of service for adaptation on more occasions and are, therefore, used less efficiently.

5. Packing labor is used less efficiently.

The losses resulting from all these factors are extremely difficult to measure. In our 1965 study we attempted to measure the effect of a standardized net weight regulation on Factor No. 5 above, loss of packing labor efficiency, by comparing the amount of packing labor used in our South African subsidiary's plant, which is subject to regulation, with that of our Mexican subsidiary's plant which is not subject to that type of regulation.

The study involved performance by the two subsidiaries during the year 1964. In 1964 (and at the present) the South African subsidiary [Kellogg Company of South Africa (Proprietary) Limited] operated under a packaging regulation prescribing net weight scales of quantities "for pre-cooked breakfast foods manufactured from a cereal: 1 oz., 2 oz., 4 oz., 6 oz., 8 oz., 10 oz., 12 oz., 1 lb. or any integral number of pounds", Weights and Measures Regulations 1943, as amended, Part II, (2) (p) under the Weights and Measures Act.<sup>1</sup> The Mexican subsidiary [Kellogg de Mexico, S.A. de C.V.] operated free of regulations of this sort and was thus in a position to select its package net weights in order to meet the needs of consumers and to conform to good economic packaging practices in the selection of net weights for its products.

The South African and the Mexican plants were both completed and put into service at approximately the same time. South Africa in 1949, Mexico in 1951. The two plants were designed to have the same capacity for processing and packing ready-to-eat cereals. The packing facilities for family size packages in each of the two plants consisted of two packing lines which were substantially identical and would have the same capacity for packed cereal if run under identical conditions. The packing facilities of each plant are listed on Table 1 attached.

In 1964 the South African subsidiary marketed twelve different product sizes for family consumption. To achieve the twelve different family sizes, six different dimensional size cartons were used. The Mexican subsidiary marketed during 1964 nine different product sizes for family consumption and, not being required to market products in net weights established by regulation, it was able to keep the number of dimensional size cartons for family use to three. The 1964 product sizes for family use marketed by the Mexican and the South African subsidiaries grouped by dimensional size cartons used are shown on Table 2 attached.

During 1964 the Mexican subsidiary was able to devote one of its family size packing lines exclusively to the 120.1 cubic inch package in which five different products were packed. As a result, this line was operated efficiently and there were no occasions on which the line had to be adapted to a different size package. Adaptation of the other line to different size packages was then kept to a minimum.

During 1964, the South African subsidiary was required to pack its family size cereal products in packages of six different sizes and the two family size lines which the South African subsidiary uses had to be adapted to a change in package sizes on many more occasions. As a result packing labor was used

<sup>1</sup> Prior to amendment the regulation required cereal to be packed only in net weights of 1 oz., 2 oz., 4 oz., 8 oz., 1 lb. and integral numbers of pounds. The regulation has been amended to its present term during the interval between 1958 and 1964.



less efficiently. The following factors all contributed to the lesser efficiency of the South African plant:

1. Packing crew labor is lost while packing lines are being adapted.
2. Packing crews and lines are used less efficiently during the start-up period immediately following a change in the packing line. Packing lines cannot be put into satisfactory adjustment by initial adjustment of packing machines. Following initial adjustment a line must be operated with a full crew on hand on an intermittent basis while final adjustments are made.
3. The increase in complications involved in scheduling, carton inventory and other problems result in a loss of efficiencies in the use of packing labor.
4. The packages used are of more awkward shapes and require more labor to keep the packing lines operating properly. The reasons for the awkward shapes are set forth below.
5. Additional packing room labor is required to handle underweight and overweight packages and spoilage, all of which is greater in the South African plant because of the awkward package shapes which are the direct result of the regulation of net weights of cereal packages.

It is impossible to assign values to the additional labor requirements of the South African plant because of any one of the factors mentioned above. Additionally it is impossible to determine with precision the additional labor requirements of the South African plant resulting from the regulation requiring standardized net weights and the greater number of dimensional package sizes and the awkward shaped packages needed to conform to the regulation and not the result of other factors as for instance greater volume at the Mexican plant. However, despite the fact that the plants had substantially the same packing facilities and the volume was comparable, the use of packing labor in terms of number of family sizes packed was considerably higher (51% higher) at the South African plant in 1964. The major difference in 1964 in the operations of the two plants is the South African plant's necessity for compliance with the standardized net weight regulation, and to this difference must be attributed a substantial portion of the excess labor requirements experienced by the South African subsidiary.

In 1964 the pound production of family size packages of the two subsidiaries based on an index of the 1964 Mexican production as 100 was as follows:

*Family size cereal production, 1964—Mexico 1964 production equals 100*

	Pounds
Mexican subsidiary .....	100.0
South African subsidiary .....	88.9

During 1964 the amount of packing labor required by each subsidiary to pack 1,000 cases of twenty-four packages per case of the two subsidiaries was as follows:

*Packing Room Labor Required*

	[Man hours per 1,000 cases]
Mexican subsidiary .....	88.6
South African subsidiary .....	183.3

During 1964 the South African subsidiary also expended approximately three and one half times the number of man-hours of mechanical labor per one thousand pounds of food than did the Mexican subsidiary. Mechanical labor is used for purposes other than adaptation of packing lines to different size packages and it is impossible to determine how much excess mechanical labor was required to perform the excessive number of line changes. However, a portion of the excess mechanical labor was required by the necessity of making more line changes.

Since 1964 the performance of the Mexican plant in comparison with the South African plant has improved in this respect. However, 1964 was the last year in which volume of the two plants was comparable, and comparative figures become less reliable as an indication of the additional burdens imposed on operating efficiency.

The requirement of standardized net weights in family size packages requires deviations from good packaging practices which manifest themselves in areas other than cost (although these deviations also have an adverse effect on cost). To illustrate, samples of all the family size cartons presently used by South African subsidiary are enclosed. (Because of a limited number available sample cartons are enclosed only with Mr. Staggers' copy.)

The difficulty of adapting a packing line to a different size package is greatly increased if the height of the package is changed. Therefore, to keep packing efficiently losses to a minimum, packing machines are set to pack cartons of a fixed height and the carton width and thickness are varied from product to product in order that the carton will hold the standardized net weight.

Historically, the first cereal products produced in South Africa were corn flakes and Rice Krispies in eight ounce packages. Packages of suitable dimensions were designed both 9½ inches tall, the eight ounce corn flakes and Rice Krispies enclosed being representative of the dimensions of the initial design of the packages. Initially two packing lines were set to pack these two packages.

As other cereals were added to the product line of the South African subsidiary it became necessary, in order that adaptation of packing lines be as efficient as possible, to pack them in cartons of the same height as the original packages. As a result, packages were designed not with the primary purpose of meeting consumer needs or developing efficient packaging, but with the purpose of achieving a net weight of eight ounces (that being the only marketable size allowed by regulations then in effect) and having the same package height as the cartons of the existing products which were being packed.

In 1958 the decision was made to add a larger corn flakes package, consumer demand justifying another larger size. At this time the 301.9 cubic inch package, 11½ inches tall, was designed and one of the packing lines was adapted to pack the taller package. Following this change any packages could be used which were of either height and contained net weights of either eight or sixteen ounces. Subsequent to 1958 the regulation was amended to permit packages of net weights of 8, 10 and 12 ounces. One result has been the tall, thin packages which are more difficult to pack and more inconvenient for consumer use. Another adverse result has been the use of packages which are either too small or too large for the contents.

As an example for the purpose of efficiency and reducing the number of packing line changes, the 126.2 cubic inch package is used for eight ounce packages of Rice Krispies, Sugar Frosted Flakes and All-Bran Flakes. All three products have different product densities with the expected result that the package cannot be of the proper size to hold all three. A comparison between the actual contents of the South African package and the optimum contents according to this Company's package design principles in effect is as follows:

[Weights in ounces]

	Net weight, South African package	Optimum net weight, U.S. principles of package design
Product:		
Rice Krispies.....	8	7
Sugar Frosted Flakes.....	8	9½
All-Bran Flakes.....	8	11

<sup>1</sup> The optimum net-weight under the company's principles of package design of the 126.2-cubic-inch package filled with All-Bran Flakes has been determined on the basis of the product manufactured in United States which is different than the product prepared in South Africa. The optimum net weight shown of 11 ounces is therefore questionable.

It can readily be seen that the 8 ounce package of Rice Krispies contains more product than the optimum. This is achievable only by producing a product of different specifications in order to achieve the required net weight. As a result the sealing of the packages is less reliable and the number of packages rejected in the plant (at a considerable additional cost) is increased. The packages of the other two products contain less cereal by volume than the size of the package would call for under Company standards in effect in the United States.

The conclusions of this study may be briefly stated. In Mexico (and in the United States) the primary considerations in design of cereal package are the needs and desires of the consumers and the market and the efficiency of packing the product. In South Africa primary consideration must be given first to compliance with a regulation to the effect that cereal may be marketed only in packages of standardized net weights. Only after compliance with the regulation has been achieved can the convenience of the consumer and efficiency of

production be given consideration. The results have been that in South Africa, as compared with Mexico, production costs have been higher and packages have been used which are awkward of shape, more difficult of production and less convenient to the consumer, and that in South Africa packages have been filled in many cases with more or less cereal than the package should hold.

Very truly yours,

NORMAN BRISTOL,  
General Counsel and Secretary.

TABLE 1.—Family size packing equipment used by Mexican and South African subsidiaries of Kellogg Co., 1964

Kellogg de Mexico S.A. de C.V.		Kellogg Co. of South Africa (Proprietary) Ltd.	
Number of machines	Description	Number of machines	Description
1.....	Johnson carton bottom sealer machine, Johnson Automatic Packaging Machinery Co. (now Battle Creek Packaging Co.).	1.....	Johnson carton bottom sealer machine, Johnson Automatic Packaging Machinery Co. (now Battle Creek Packaging Co.).
2.....	Lining machines, type "D," class 4131, Pneumatic Scale Corp.	2.....	Lining machines, type "D," class 4131, Pneumatic Scale Corp.
2.....	Packomatic Filler, <sup>1</sup> model 7-3151 T, Ferguson Machinery Co.	1.....	Pneumatron filler, <sup>1</sup> class 2634, Pneumatic Scale Corp.
2.....	Liner sealing top closure <sup>2</sup> machine, Kellogg Co. design and built.	2.....	Liner sealing top closure <sup>2</sup> machine, Kellogg Co. design and built.

<sup>1</sup> The 2 fillers used in the Mexican plant are the equivalent of the 1 filler used in the South African plant both as to output and crew size. 1 person mans both fillers in the Mexican plant and the combined operating speed is 76 packages per minute. 1 person mans the filler used at the South African plant and its operating speed is also 76 packages per minute.

<sup>2</sup> Kellogg designed and built top closure machines are identical at each plant.

TABLE 2.—Product sizes marketed by Kellogg Co. of South Africa (Proprietary) Ltd. and Kellogg de Mexico S.A. de C.V. in 1964 grouped by dimensional size carton used

KELLOGG CO. OF SOUTH AFRICA (PROPRIETARY) LTD.

Product description or tradename	Carton volume (cubic inches)	Net weight (ounces)
Corn Flakes.....	301.9	16
All-Bran Flakes.....	189.4	12
Rice Krispies.....	189.4	12
Raisin Bran.....	150.9	12
Honey Smacks.....	150.9	10
Corn Flakes.....	153.7	8
Rice Krispies.....	126.2	8
Sugar Frosted Flakes.....	126.2	8
All-Bran Flakes.....	126.2	8
Coco Pops.....	99.8	8
Hi Bulk Bran.....	99.8	12
Ricicles.....	99.8	8

KELLOGG DE MEXICO S.A. DE C.V.

Carton volume (cubic inches)	Product description or tradename	Net weight (grams and approximate ounce equivalent)
194.9.....	Corn Flakes.....	280 grams (10 ounces).
120.1.....	Sugar Pops.....	270 grams (9½ ounces).
120.1.....	Zucaritas (Sugar Frosted Flakes).....	280 grams (10 ounces).
120.1.....	Hojuelas de Trigo (Wheat Flakes).....	Do.
120.1.....	Dulceoral (Coated Puffed Wheat).....	250 grams (8¾ ounces).
120.1.....	Corn Flakes.....	170 grams (6 ounces).
83.4.....	Choco Krispies.....	260 grams (9¼ ounces).
83.4.....	All-Bran.....	280 grams (10 ounces).
83.4.....	Rice Krispies.....	160 grams (5½ ounces).

Mr. SPRINGER. May I say to you two gentlemen, this is quite revealing. Thank you very much.

Mr. MACDONALD (presiding). Mr. Gilligan, do you have any questions?

Mr. GILLIGAN. I am sorry, Mr. Roll, I was not here to hear your statement, and your full presentation, but I have read through your statement and I find it quite interesting.

The question I would like to raise with you is: How many size packages and different kinds of packages do you presently use for the American market?

Mr. ROLL. We have 34 different packs, packed on 11 packing lines. If we followed the regulation, that is the proposed legislation in the bill, the 11 packing lines would have to be increased to 28 different sizes.

Mr. GILLIGAN. How often have you made changes in recent years in the number of containers you used or their sizes?

Mr. ROLL. I could think of only one during the last 12 months, and that was one produce. The size was reduced and the price was reduced to go along with a new ounce weight per package.

Mr. GILLIGAN. Why did you make the change?

Mr. ROLL. Because we found equipment that would be able to pack it more satisfactorily, so we reduced the package from 12 ounces to 10½ and our price was reduced accordingly.

Mr. GILLIGAN. You may have referred to this in your testimony, and I am not sure, but I would like to ask the question anyway; in your cereals, you put out a variety of packs, that is several kinds of cereal available in one container.

Mr. ROLL. We call it a variety pack. Those are all individual packages and we can't find anything in the bill where it refers to packages packed in 1-ounce packages.

Mr. GILLIGAN. That was my next question. I was going to ask if this would exclude anything under 2 ounces, and I wondered what the weight of those packages would be.

Mr. BRISTOL. I don't think it would exclude our variety pack in that you have a number of packages of close to 1 ounce, 10 of them in 1 package and you end up with a net weight of close to 10 ounces.

Mr. GILLIGAN. I was just wondering what that variety pack might look like if all of them had to contain the same weight of cereal. It would be a little lumpy.

Mr. ROLL. It would when we would have to get all new equipment.

Mr. GILLIGAN. The other question that I have, and the last one, is this: Presumably you received a good deal of mail from your consuming public, either comments favorable or unfavorable about your product, and so forth. Are you aware of complaints made about the difficulty of the consumer, the housewife, being able to determine the price that she is paying for your product, in comparison to other products, or she feels that she is being confused or deceived by your present packaging methods?

Mr. ROLL. The consumers are our bosses, and if we don't please the consumers we are going to go out of business. We get very little mail from the consumer on things that we haven't done right. If we do get mail that something isn't being done right, we make every effort to correct it.

Mr. GILLIGAN. Have you so far as you are aware, had any mail on the specific subject of complaints about the difficulty of comparing prices in the cereal field?

Mr. ROLL. No, sir. I don't recall a letter.

Mr. GILLIGAN. Thank you very much.

Mr. SPRINGER. Would the gentleman yield?

This keeps coming up and I am going to try to keep it to a minimum, but without changing packaging, would there be any solution which you could offer if we merely did something in bold type which informed the consumer of how much was in the package?

Mr. ROLL. I think there is a food and drug law that we wouldn't be permitted to do that.

Mr. BRISTOL. We would be required to state the net weight on the package.

Mr. SPRINGER. There are a lot of them you would have to look at the fine print. Maybe you don't, but some of them do.

Mr. BRISTOL. But the model regulation is fairly specific, and in force in many States. It is quite specific on type sizes.

Mr. SPRINGER. On the size of the type of the weight and so forth, that must be on there?

Mr. BRISTOL. Yes.

Mr. ROLL. We have a cereal institute certificate that talks about the principles of good practice, regarding the net weight and fill of the packages, which all of the cereal companies comply with.

Mr. SPRINGER. What I am talking about on packaging generally is this: Suppose you had a circle at the top and put in "so much net weight," and would this comply with it?

Mr. BRISTOL. It wouldn't create the problems that we have discussed in our studies. It is a matter of changing plates. But we have in quite large type in the lower left-hand corner the net weight.

Mr. SPRINGER. This would have to be uniform so that the housewife could look at the same place on everything that was sold over the counter. But I am getting sort of convinced, after listening to this testimony, that this is going to be a consumer's cost bill, and it is being misrepresented as merely a labeling and fair packaging bill.

There are going to be some substantial costs in every one of these. What I am trying to get around to on this, if there is a shortcut to this, where we can get to honesty in packaging, so that the housewife can see it, without getting into all of this about standardizing packages, and so forth.

Can you give me any answer to that?

Mr. ROLL. I would say as far as the cereal business is concerned, our packages are all labeled honestly.

Mr. SPRINGER. But you haven't given me any answer to my question. I thank the gentleman from Ohio for yielding to me.

Mr. WATSON. I do apologize for not being present to hear all of your testimony. I glanced through it, and I will certainly read it more carefully later on.

I assume that there are some of you who feel that one box would contain 1 ounce, and 1 ounce of another commodity would probably have twice the size box. Is that about it, because of the density of the size of the product?

Mr. ROLL. We have one packing line, Mr. Watson, that we pack from 5 ounces up to 18 ounces.

Mr. WATSON. In the same size container?

Mr. ROLL. Yes, sir.

Mr. WATSON. Well, now we are going to have to cut that out under this bill, and how would you handle that? Would you just crush the corn flakes and tell them that according to Government standards we have crushed them for you and you won't have to crush them yourself?

Mr. ROLL. It means we have to buy new equipment and we would have to pay the additional costs or the consumer would have to.

Mr. WATSON. You are talking about buying new equipment. If you are still dealing with the same commodity and you have to put 8 ounces in every package, you are going to have to crush some of them, aren't you, or change the complete formula for your manufacture of the cereal itself?

Mr. ROLL. You are not going to be able to do it. Under this standardization of the package, you are not going to be able to pack it in the 8, 6, 18, and 16 and 7 and 9 and 5 ounces that we pack now. You are going to have to pack in what the Government states we can pack the weight of food in the package, and so from what we have heard and stated by the people of the Government, it is going to be 8 and 16 ounces, which is going to mean the package size is going to have to change.

Mr. WATSON. Of course, I may have facetiously suggested something. You might try this prechewed cereal, and it may help some of those who have lost their teeth, and it might be appealing from that angle there.

On page 10 you state in the third paragraph that you consider in developing new packages their relation to the likely size of the pantry shelf, the length of time packages will remain open on the pantry shelf and whether there is enough cereal in the package to meet the needs of the family from one shopping trip to the next, and the extent of the retail price at which the package will be sold.

Should this legislation pass, those packages will probably be extended all the way out the window; is that right?

Mr. ROLL. That is right.

Mr. WATSON. Pursuing the line of questioning that my colleague, Mr. Springer, advanced a moment ago, this bill could result in increased cost to the consumer?

Mr. ROLL. Very definitely, a reduction in the choices that will be available to the housewife when she goes into the market to shop. And we might have also, sir, what it costs us to sell less volume.

Mr. WATSON. Thank you very much.

Mr. MACDONALD. Mr. Pickle?

Mr. PICKLE. I have no questions, Mr. Chairman, thank you.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. Mr. Roll, I have read your statement over and I can readily understand your objection to the standardized packaging aspects of the particular bill. What are your objections to the labeling aspect of the bill?

Mr. ROLL. May I turn that over to our general counsel, please?

Mr. HARVEY. Yes.

Mr. BRISTOL. I think essentially the labeling aspects of the bill are adequately covered by the existing law, principally section 403 of the Federal Food, Drug, and Cosmetic Act, and the model regulation which is in force in many of the larger States prescribing type sizes for net-weight statements.

Mr. HARVEY. I think many of us on this committee would agree with you in that regard, but my question is if this committee were to report out a bill which amounted to no more than a restatement of the law, let us say, which may very well happen, what would be your specific objection to portions of this bill pertaining to labeling? For example, do you have any objection to that section of the bill which would require quantities in less than a full pound to be stated in ounces? You would have no objection to that; would you?

Mr. BRISTOL. We are currently under regulation of the Food and Drug Act which says not 18 ounces, but 1 pound 2 ounces. It is my personal view that one way or another I don't see a problem.

Mr. HARVEY. What you are telling us here this morning is that your problem comes about, and we can understand it very readily, because of the standardized packaging; is that correct?

Mr. BRISTOL. That is the most serious aspect of the thing; yes, sir.

Mr. HARVEY. And that is a very serious problem indeed. I think that is readily understandable.

I thank you very much for your testimony.

I have no further questions, Mr. Chairman.

Mr. MACDONALD. You say that this bill, as now promulgated, will boomerang and that it will actually be a law that, if enacted, will hurt the consumer rather than help him. We on the committee are not experts in this field, obviously, or at least I am not, but we listened to testimony from people in the Government, a panel, and one of them, Mrs. Peterson, who is a very knowledgeable person, representing the administration, representing the Office of Consumers, wholeheartedly supports this legislation. We had a woman who represented the consumers in California, Mrs. Nelson, who also wholeheartedly supported it.

I am curious that you, as a manufacturer, say you are sticking up for the consumer in opposing this bill, yet the people who have been appointed representing the consumer say this is a fine and much needed bill. Therefore, one of you has to be wrong.

Do you think that the people who testified before us on behalf of the consumer are incompetent, that they don't know the field, that they are just talking from ignorance? What is your position toward them?

Mr. ROLL. We have great respect for the folks in Government, but we did want to present our testimony on what the cost would be to the consumer if we had to comply with this proposed legislation.

Mr. MACDONALD. I would judge your position is—I know you are a reputable firm, obviously, when you have gotten as big and as powerful as you now are—that you agree that there are some people packaging goods who do cut corners and who do mislead the public?

Mr. ROLL. Mr. Chairman, I am not familiar enough with other people's practices.

Mr. MACDONALD. I thought this was a highly competitive field, and any knowledgeable person in a company such as yours would be very familiar indeed with the practices of your competitors. Do you say you are not familiar with the practices of your competitors?

Mr. ROLL. I am very much familiar with the practices of our competitors and they are all trying to do an honest job.

Mr. MACDONALD. You say there are no sharp practices in the packaging field?

Mr. ROLL. Not as far as the cereal business is concerned.

Mr. MACDONALD. You don't use discounts or cents off, that sort of thing?

Mr. ROLL. We don't in our business.

Mr. MACDONALD. Nor do any cereal manufacturers that you know of?

Mr. ROLL. They have at different times.

Mr. MACDONALD. Don't you think this is a rather accepted practice?

Mr. ROLL. As far as the manufacturer is concerned, I can't see anything deceptive about it. They have taken it off their price.

Mr. MACDONALD. But what does the cents come off? We have asked this question innumerable times. I am getting rather tired of asking the question myself. I haven't yet had an answer.

Mr. ROLL. When you have a cents off, it usually comes off your list price. It is passed on through the wholesaler to the consumer on the same basis.

Mr. MACDONALD. When you are saying "list price," you are saying that you tell the retailer what price he should charge for your product?

Mr. ROLL. No, sir.

Mr. MACDONALD. Then what is the cents off of? If it is manufactured in your plant, you say 4 cents off. What is it going to be 4 cents off from? You don't know what the retailer is going to sell it for in the first place, presumably.

Mr. ROLL. There is enough competition in the retail channel that it usually comes out at the price you propose. We have nothing to do with the retail price. But I haven't found any retailers who haven't followed the cents-off practice that was intended.

Mr. MACDONALD. When you manufacture this box of your goods and it says "4 cents off," what is the 4 cents off of?

Mr. ROLL. Off of the price that we sold it for before the 4 cents was off.

Mr. MACDONALD. But you don't know what the the retailer is going to sell it for by your own statement.

Mr. ROLL. That is right.

Mr. MACDONALD. So how do you know if he is going to sell it at 4 cents off from the price you are giving him?

Mr. ROLL. If it is marked 4 cents off, the price on the retail shelf should be 4 cents off from the price it was before.

Mr. MACDONALD. It should be, but is this always the case?

Mr. ROLL. I would say in most of the cases, the majority of cases, that is right.

Mr. MACDONALD. Mr. Nelsen?

Mr. NELSEN. Thank you, Mr. Chairman.

In your testimony, you mentioned the fact that you cannot slack fill. Would you elaborate on that a bit?



Mr. ROLL. I will pass that, if I may, Mr. Nelsen, to our general counsel.

Mr. NELSEN. I would be interested in that because the slack fill has been in the testimony off and on all the way through this hearing. I was interested in the observation that was made that you cannot slack fill. This was in an ad-lib portion of your testimony and was not in your written statement. Would you enlarge on that a bit?

Mr. BRISTOL. I think the Food and Drug Act prohibits a package made, filled, or formed so as to be deceptive. I think Mr. Roll stated, in response to a question by Mr. Younger, the problems which require space between the top of the cereal and the top of the package; summing up, the need for additional space to seal the inner bag of the package, the problem that occurs in the further shaking down in the railroad cars, and the need to design your packages to allow for variations in product density.

Mr. NELSEN. Is it your opinion that the Food and Drug Administration under present law has the authority in the event the slack fill is beyond what is needed for proper packaging? I understand a package of cereal, for example, if you were to fill it too full in the packaging, it would crush and it would not be an attractive product, and, therefore, you have to allow for the sealing of the package.

Suppose it goes to an extreme or it is not even filled to the level that it could be filled to? Is it your judgment that the food and drug laws could then bring action where it goes to an extreme beyond the necessary level?

Mr. BRISTOL. I think so.

Mr. NELSEN. I would like to point out that in testimony by Administration representatives, including Mrs. Peterson, many of the examples that were brought to our attention as testimony in support of this bill were examples that could be handled under existing law. In my judgment, there has been considerable deception in the sale of this bill. Therefore, I think it is important that the present laws be fully brought to the attention of the consumer through the media of this hearing.

One angle that is not often touched upon that I think is very serious is the enforcement machinery under this bill. The Federal Trade Commissioner made the statement that they wanted the authority on an industrywide basis to proceed by the rulemaking authority provided in this bill. Instead of going through adversary proceedings the Commission would, instead, be able to proceed on an industrywide basis.

The penalty provisions in this bill, as I understand it, and I am not a lawyer, provide that in the event that any processor violates what is determined to be the rule, you are guilty until you prove you are innocent. Then, as the law reads, you are permitted to come into court to prove that you are innocent. If you continue this practice you are subject to a penalty not only on this one case, but it multiplies because of the delay in handling.

In this committee we have opposed a cease and desist application of antitrust laws, fearful of the fact that you are guilty until you are proven innocent. But under this bill you would be guilty, as I understand it, until you are proven innocent. Have you gone into that feature of the bill?

Mr. BRISTOL. That is a difficult question to answer, sir. I think certainly under this bill if you violate the regulations that they establish you certainly incur the penalties of the act. That is the end of it.

Mr. NELSEN. Under present law you would be on a case-by-case basis, however. Under this bill you would come under the penalty provisions of the Federal Trade Act and not under Food and Drug. On that basis you would be subject to a much more severe application, as I understand it.

Mr. BRISTOL. No, sir. As I understand this bill, and I am aware that Mr. Dixon disagrees with this aspect of it, under this bill the machinery of the Food and Drug Act applies to a violation of the regulations under this act in the case of a food.

Mr. NELSEN. I have no further question, Mr. Chairman.

Mr. MACDONALD. Thank you, gentlemen. If there are no more questions from the committee, you will be excused.

Mr. BROYHILL. Mr. Chairman, I have a question.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. I notice that in your testimony you make the assumption that packaging of cereals would be standardized at net weights of 8 and 16 ounces. Where did you get this assumption? Is that from the legislation or is it from statements of officials of the Government who will have the responsibility for administering this legislation?

Mr. ROLL. I will give you the answer that we have. We determined our increases in cost of prices on the basis of packaging with net weights of 8 and 16 ounces because those were the net weights suggested by the proponents of this bill. They suggested that packaged weights of cereals in a speech September 24, 1962, in an article in the Coronet magazine, reprinted in the Congressional Record on March 10, 1965, and a statement in the Senate Commerce Committee hearings on S. 985 in April and May 1965.

I was also told that 8 and 16 ounces have been suggested in testimony of witnesses favoring the bill before this committee.

Mr. BROYHILL. Thank you very much.

Mr. MACDONALD. I would like to pursue what Mr. Broyhill has brought up. What you have quoted has nothing to do with this bill. You quote some article in Coronet or some statement made in a speech, or something that was incorporated in the Senate bill. But we are not looking at the Senate bill. We are looking at H.R. 15440.

Mr. ROLL. I agree on that, sir.

Mr. MACDONALD. I would like to ask where in this bill is there anything said about standardization? Mrs. Peterson at one point used the word standardization and then said, and I believe I quote reasonably accurately:

I didn't mean to use that word because that isn't the intention that this panel has in following out this legislation.

I don't know where this standardization of product comes from.

Mr. ROLL. I will leave that to our general counsel.

Mr. BRISTOL. Let me make a comment, sir. When we made this study, we had to pick two weights. Because of what we had before us to select two weights, all we had were the 8 and 16 ounces mentioned by the proponents. We did not make a detailed study as to the effect

that any other two weights selected would be. We didn't make a financial study as to what the costs would be if you selected any other two weights.

Our marketing research and production people all indicated that the results would be comparable, maybe somewhat more, maybe somewhat less.

Mr. MACDONALD. That may be an answer to my question, but if it is I don't understand it.

Mr. BRISTOL. What I am saying is that you can't make a study without knowing what—

Mr. MACDONALD. I am not talking about studies. I am sure you are in a fine position to make studies about your own product. What I am talking about is this bogeyman that has been raised about standardization of product. I don't see where it is in the bill. I don't believe it is in the bill.

I asked you to show me where it was. You have given details of what goes into the reasons for taking the study, but I don't believe that has anything to do with the question I asked.

I yield to Mr. Watson.

Mr. WATSON. If the chairman will yield on that particular point, I think section 5 sets forth the authority to control the size, shapes, and so forth of packages.

The only way it could possibly be administered in an equitable manner is to have standardization.

I agree with you that Mrs. Peterson did skirt all around the use of the word "standardization," but I think the slip was indicative of what the ultimate result of this legislation will be.

Mr. MACDONALD. If the gentleman will yield, I might point out to the gentleman what he knows very well, that Mrs. Peterson is not going to write this bill; that the gentleman and the other members of this committee are going to write the bill. What Mrs. Peterson has in mind, whether a Freudian slip or whatever it may be, I don't know.

But I point this out to the gentleman and also to the very distinguished counsel of this company, this so-called infamous section 5. Maybe I am reading it incorrectly, but I will read the words to you again and ask if you think you would fall into difficulty with this.

The power to prevent distribution of that commodity for retail sales in packages of sizes, shapes or dimensional proportions which are likely to deceive retail purchasers.

You said obviously you have no intent to deceive anybody. Therefore, I don't think you would be bothered by this sentence. Would you?

Mr. BRISTOL. I am sure we would, sir. This seems to me like a simple finding of fact, and, in effect, an unreviewable finding of fact. This is what the proponents, excuse me, sir—that is all we have to go on—seem to be saying about packages, that a variety of sizes is likely to deceive or cause confusion, or impair the ability of consumers to make price comparisons.

Mr. ROGERS of Texas. Mr. Chairman?

Mr. MACDONALD. Mr. Rogers.

Mr. ROGERS of Texas. Isn't this the point, that section 5 makes it possible for a determination to be made as to a definition of deceive that is not a reasonable definition, not a practical definition?

In other words, a company may be using some method to appeal to consumers, and it would be within the power of the Government to come in and say, "We find that this is deception." And you say it isn't deception. It is an attempt to sell merchandise.

Mr. BRISTOL. They would find this is likely to deceive, or likely to impair price determinations and so forth.

Mr. ROGERS of Texas. They would be the ones that would make the determination of what is or what is not deception. It would be a check rein on the private enterprise system, definitely.

Mr. MACDONALD. Mr. Younger?

Mr. YOUNGER. I would like to read into the record what I ran across the other day. This is from the National Association of Internal Revenue Employees. On August 16 they issued a press release relative to Senator Ervin's bill of rights for Federal employees. This is what they had to say:

To insure that the IRS employee has dignity as well as honor, we have found that he must be liberated entirely from the prying tentacles of a noseey bureaucracy.

This is what the employees say of their own organization.

Mr. MACDONALD. Thank you very much.

Mr. BRISTOL. Thank you very much.

Mr. ROLL. Thank you, sir.

Mr. MACDONALD. Is Mr. A. E. Wright of the Pet Milk Co. present? Would you come forward, sir?

**STATEMENT OF ARTHUR E. WRIGHT, JR., DIRECTOR OF PUBLIC RELATIONS, APPEARING IN BEHALF OF THEODORE R. GAMBLE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, PET MILK CO., ST. LOUIS, MO.**

Mr. WRIGHT. Mr. Chairman, Mr. Theodore R. Gamble, the chairman of the board and chief executive officer of Pet Milk Co., was scheduled and prepared to testify before this committee on several previous occasions. He was first scheduled to appear on August 2 and then rescheduled later that week. Because the testimony of previous witnesses took longer than expected, you were unable to hear Mr. Gamble that week.

Following that, of course, your committee then held hearings on the airline-machinist strike, and Mr. Gamble was again rescheduled to appear before your committee last Thursday, August 18, at which time he sat through the day's hearings here in Washington with the hope that he would be permitted to make his statement personally. He could no longer delay a scheduled trip out of the country and is unable to be present today.

He has asked that I read his statement for him and show you the exhibits he particularly wanted you to see. To the limit of my ability, I will also answer any questions you might have regarding Mr. Gamble's statement.

I am Arthur E. Wright, Jr., director of public relations for Pet Milk Co., headquartered in St. Louis, Mo.

Mr. Gamble's statement follows:

"Mr. Chairman and members of the committee"—

Mr. MACDONALD. Would you care to submit his statement for the record and perhaps paraphrase it?

Mr. WRIGHT. No, sir. It is not a lengthy statement and Mr. Gamble has requested I give the statement in full.

Mr. MACDONALD. Inasmuch as it is not your statement, I don't see what harm can be done by putting it into the record. You have chastised the committee by saying how long poor Mr. Gamble had to wait. I have a list here of other very busy people who would like to be heard, who would like to become part of this record.

I think it is a simple request to ask if you could paraphrase this statement, if you understand it well enough to paraphrase it. I know we would appreciate it and I know the other witnesses waiting to be heard would appreciate it. If you can't, of course, you can't.

Mr. WRIGHT. Mr. Chairman, I am afraid I cannot summarize it. The statement, itself, is a summary of our views. I hope I did not leave the impression that I was chastising the committee. I was hopefully merely explaining Mr. Gamble's inability to be present personally today.

Mr. Chairman and members of the committee:

I am grateful for the opportunity to express my views on House bill 15440.

My remarks will be brief, for I do not wish to repeat at great length what I know you have heard or will hear in other testimony. However, I shall be happy to answer any questions you may have, fully and in detail.

Generally, there are two broad aspects to the legislation you are considering.

One concerns what is said on a label, what a consumer sees and reads on a container. I support fully the objectives of these sections. But, I also believe that existing laws, both Federal and State, are adequate to achieve these objectives. If Congress is concerned—and quite obviously a number of legislators are concerned—I believe it would be more effective to appropriate more funds for more personnel and more enforcement on the part of the Food and Drug Administration and the Federal Trade Commission.

However, I wish to make it clear that Pet Milk Co. does not approach these particular sections with any attitude of "gloom and doom." To us, they seek a desirable end, even though we would urge greater enforcement of existing legislation rather than the enactment of new law. We have not noted—and venture to say that you have not, either—any great public clamor for this added legislation, primarily because the overwhelming majority of food labeling today is already honest and accurate.

It is the threat contained in section 5 of the bill regarding proposed standardization of packaging that deeply disturbs us at Pet and, I know, is disturbing to the food industry in general.

We do not believe standardization will contribute to the welfare of the American consumer. Quite the contrary, if provided for in law, it would work to her distinct disadvantage. It could reduce her freedom of choice in the marketplace, reduce the number of new and different products and packages available to her, and thereby reduce the level of competition which today works to her benefit. The only

increase would be in the prices she would pay for the food she would buy.

The threat of standardization contained in this bill presents a problem related to competition which I regard as extremely dangerous. Those who seem to be pushing the hardest for standardization of products and packaging apparently assume that there is only one form of competition in the marketing of food products; namely, price competition. Actually, competition takes many forms besides price. Quality, convenience, attractive and useful packaging, integrity of the maker and many other factors enter into the decision of a consumer to buy one product and not another.

Section 5 of H.R. 15440 is clear in its implications. Our interpretation of this section convinces us that the bill would definitely reduce competition in many of these forms.

Reducing competition in our Nation's largest industry, the food business, is certainly neither the intent nor the purpose of Congress. Yet, this is exactly what would happen if this bill were passed in its present form and if its provisions were enforced to the letter of the proposed law. I respectfully submit that, before taking action, you carefully consider the impact on competition that could come from passage of this bill.

The procedures to be followed under this law in the introduction of new or improved products and packages are not clearly defined. However, we have carefully followed the testimony which was delivered on S. 985 in the Senate hearings as well as that given to date in the hearings on H.R. 15440. From studying these it is obvious to us that some kind of premarketing clearance procedures would have to be developed by the Federal agencies involved in enforcing this legislation.

As a practical matter, a food manufacturer could not risk the investment of hundreds of thousands or perhaps even millions of dollars in the development of and tooling up for a new product and/or packaging without knowing whether or not he would succeed in obtaining Government clearance and approval. Thus, the bill would act as a real deterrent in new product and new package innovations.

In our judgment, House bill 15440 could become virtually a licensing procedures for new packages or new products or both. Not only law which would require time-consuming premarketing clearance would there be timelags in our introduction of such new products or packages but we fear that information developed in such clearances could become public knowledge and, therefore, would be available to our competitors. As a consequence, new product and new package development, as we know it today, would be reduced.

We are willing to risk a substantial investment in a new product or package only if we are reasonably confident that we can enter the market with a sufficiently superior product and superior packaging, so that we can compete successfully and earn a satisfactory return on our investment.

You already have heard or will hear testimony on what package standardization could mean in the increased cost of food processing and thus in increased prices to the American consumer.

Just briefly, and for the record, I want to reiterate this important point. There is no doubt in our minds that package standardization would definitely increase the cost of packaging our many products. We would have no choice but to pass this cost increase on to the consumer. No real benefits would accrue to the consumer from package standardization, but price increases would result. This is all the more reason, we believe, for consumers as well as food manufacturers to oppose this legislation.

It has been suggested that we present to this committee some specific information on just how much cost would be involved in package standardization. Although several companies have provided you with information along these lines, these have been firms with relatively narrow product lines. Our company, on the other hand, has an extremely diverse range of products. One of our 11 divisions—and one of our smaller divisions, at that—alone markets over 1,500 different food products today.

With all of our divisions, we have literally thousands of different products on store shelves. We did start a task force working on estimated costs of adapting our packages to some standardized forms but, frankly, the group came back to us and informed us it was virtually impossible to come up with meaningful figures for our many product lines.

Before we can give you more precise information, we ourselves must have more details from the Federal Government on how it intends to standardize. Among other things we must know is whose standards are to be accepted. If our standards are accepted, our costs would be one thing. If we must accept our competitors' standards, our costs would be entirely different. If we must accept Government-established standards that differ both from our own and our competitors, costs would be still different.

Suffice to say, we have done sufficient cost analysis to know that package standardization could cost us many millions of dollars. Because of the traditionally low profit margins in the food industry, we would have no choice but to pass on these added costs to consumers.

In the food industry, the great battle is for shelf space in our supermarkets and grocery stores. The fact that products are on those shelves in a wide variety of package sizes and forms is not just because the food manufacturing industry wants it that way. It is because the consumer wants it that way. They got there because a food processor saw a potential market for a different or a better or a more creative product or package. They remain only if the American consumer buys and continues to buy. If the consumer does not regularly buy all those different sizes and shapes of packages in the supermarket, I can assure you that the retailer will remove them from his shelves—and quickly.

I want to cite several examples of Pet products which rely for their success in large measure on their packaging. The products themselves are excellent ones, but the packaging which contains the products is itself one of the reasons for their competitive success. The packaging of these products gives added value to the consumer. This packaging has, without any question whatsoever, increased competition. But, these products probably would never have reached the marketplace with a standardization procedure.

The first is our Pet Formula Nurser for infant feeding. It is the first completely self-contained, fully disposable feeding unit for babies with premixed, presterilized formula in it, equipped with presterilized nipples—ready for immediate use. Mothers need do nothing more than open the nurser and feed the baby. Neither refrigeration nor warming is necessary because the baby drinks the formula at room temperature. After feeding, the entire unit—nipple and all—is thrown away.

The product in its unique package does away with such troublesome problems as inadequate sterilization and mistakes in mixing. There is nothing to add, no mixing, no measuring, no scrubbing, no boiling, no refrigerating, no warming. In just a matter of seconds, a mother can feed her baby—anywhere, anytime.

We estimate use of this product can save the average mother as much as an hour and a half of her time a day compared with conventional baby feeding methods. The packaging of this product costs us, and the mother, perhaps as much as the product inside. But mothers have indicated they are more than willing to pay for the tremendous saving in time and effort this product makes possible for them.

We believe this is the ultimate in infant feeding, offering complete safety, and nutritional effectiveness to the infant, a choice of formulas to the physician, and the utmost in convenience to the mother.

Our research and development costs on the packaging alone for this product were over a million dollars. It is our judgment that—if H.R. 15440 had been in effect as presently written—we would have been unwilling to invest this huge sum of money.

Had H.R. 15440 been in effect and product and package standardization a reality, there would undoubtedly have been standards already established for infant formulas and the packages containing them. With such standards set, we would be unable to justify the risk of trying to enter the market with another “me too” product almost identical with existing products.

Or, if the premarketing clearance procedures for markedly new products or new packaging had been established by the Federal Government as mentioned earlier in my statement, we would have this decision to make: Could we risk the expenditure of a million dollars or more on development of a product with the very real possibility that we would be turned down in Washington because our innovation departed so far from previous products and packaging? Our answer is “No.”

Or, take still another alternative. Let us say we did invest the necessary funds and did succeed in developing the product. We have up to this point maintained the tightest possible security about this product. It is top secret to us and we guard it with the same vigilance that is accorded a top-secret matter in the military. Now, we have to take it to Washington for hearings of the type mentioned in H.R. 15440. What assurance, if any, do we have that our secrecy will be maintained and that our competitors will not learn of our plans as much as 6 months or a year prior to the time they otherwise would?

Destroying this leadtime we would normally have in the introduction of a new product or package could very easily mean the difference between profit and loss to us. With adequate leadtime, we can estab-



lish ourselves in the marketplace and earn a fair return on our investment. Without leadtime, competition would move in so swiftly that we would be unable to obtain a strong enough market position to justify our investment.

There would be so great a danger of our competition learning of our products, packages and plans under a premarketing clearance procedure that the net result would be to cause a substantial slowdown in the development of new and useful innovations in food products. Our Formula Nurser is a case in point. Under H.R. 15440 we probably would never have brought it into being and mothers throughout the Nation would have been deprived of a product they have indicated they want and will buy. Under the competitive system now in operation in this country, we were willing to take the risks involved—to the benefit of consumers as well as ourselves.

Here is another example which we believe will show how package standardization would decrease competition, would reduce consumer freedom of choice and would work to the disadvantage of consumers. About 2 years ago there were three nondairy coffee creamers on the market nationally. Because our evaporated milk had, through the years, been a traditional coffee creaming agent, we felt we had some market know-how in this field and considered entering the market.

Our research center developed a product which they felt—based on extensive consumer testing—was better than competition but was only marginally better—perhaps 10 or 15 percent. We did not feel this was a sufficient margin of superiority to enable us to compete successfully against three major national companies as the fourth entry. We felt we had to have something else to offer the consumer—a plus value that would bring our product to the attention of the consumer and make her select it over competition.

All three competitors marketed their products in brown glass jars rather similar to this one. We knew we could not compete successfully if we marketed our product in yet another brown glass jar. So we asked our packaging specialists to come up with a distinctive package in which we could market our instant Please. The result was this attractive white plastic cream pitcher. This package is pretty enough to leave on the breakfast table. Its shape and appearance denote its use and it has been extremely well received by consumers, who have even discovered an amazingly wide variety of reuses for the container once the product inside has been used.

Prior to our entry into the nondairy coffee creamer market all the products were packaged in brown glass jars. If—because the standard had been set for this product category to be marketed in brown glass jars—we would never have entered a competitive product. With a different, nonstandard package we did enter the marketplace. Now, where there were three competitors you have four—but only because of package innovation.

Passage of H.R. 15440 in its present form would stifle package innovation of the type I have described for you. And, consequently, it would reduce competition.

My essential point is this: There is a great deal more today to successful marketing than merely having a good product and uniform, standardized packages with accurate labels. I submit that consumers

want different packaging because it adds interest and variety to their shopping and because it has values to them over and above the mere containment of a product. Everything in our business experience leads us to believe that consumers like and will buy an increasingly wide variety of products in an equally wide variety of package forms.

I am highly gratified that your committee has been willing to listen attentively to many corporate citizens as well as to individuals during its hearings. It shows that you recognize the importance business has in our national economy and that, even though corporations have no vote as such, that you consider our views equally along with those of individual voters.

I followed with great interest the record of your hearings some weeks ago and must say that I am confident that your committee would not knowingly or willingly take action that would hinder the Nation's largest and most important single industry—the food business—particularly if there were no real offsetting benefits to consumers.

I think it is particularly fortunate, too, that this legislation is being considered by a House committee which concerns itself not only with domestic but also with foreign matters because H.R. 15440 has definite international ramifications.

These would be an important consideration for you at any time. But the situation today has a completely new dimension which was hardly evident as recently as a year ago. I urge you to give it your most thoughtful attention because it could become the most serious problem we face in this century. I refer to the growing world shortage of food being created by the population explosion.

No longer can we feed large portions of the world from our surpluses. Even our abundance is not sufficient to overcome hunger and starvation for countless millions of persons in less fortunate areas of the globe.

Our industry has met many problems of this nature in the past both at home and abroad and has helped in their successful solution. Even though the food supply problem now emerging throughout the world is perhaps the greatest in the recorded history of man, the American food industry can contribute materially to its solution.

As you well know, a national policy is evolving which is designed to focus on this major international problem and its solutions.

Many legislative and administrative officials in the Federal Government, from President Lyndon B. Johnson on down, are today addressing themselves to this matter and are seeking all the assistance they can obtain in understanding and meeting the problem. Many of them have called upon our industry to help them in finding some of the answers to this vital need. I believe I can speak for the food industry generally when I tell you that we have already cooperated fully in this undertaking and that we will continue to do so.

Under these circumstances, I must confess that I find it rather incongruous to come to Washington and to find any support for a bill which would limit rather than expand, the capabilities of the food industry. I find it difficult to believe that Congress, at this crucial moment in world history, would pass legislation which would in part reduce the food industry's ability to meet the staggering challenges which are beginning to face us.

I don't believe my thoughts on this matter are merely academic. During the past 3 years it has been my privilege to visit over 50 different countries throughout the world to examine their food supply and distribution capabilities. I have seen with my own eyes what an overwhelming problem starvation and malnutrition are throughout vast areas of the world. I know, from personal observation, that the food industry in the United States is going to have to be increasingly strong rather than weaker if we are to meet our responsibilities around the globe.

Our Government, historically, has been concerned with preserving and increasing competition. Without question, this freedom to compete has been the principal reason why our food industry has grown to the size and competence and strength which it has today. Although it goes by an emotionally appealing label as a so-called truth in packaging bill, in truth House bill 15440 would reduce competition and by doing so would weaken the food industry.

This bill seriously tampers with an economic system that has produced more value for this Nation and for its consumers—in products and services—than any other yet devised.

Before tampering with a system which has achieved results such as these—as House bill 15440 in my judgment would do—I earnestly hope that you will think long and hard. I hope, too, that you will conclude—as we have—that this bill is not in the best interests of consumers nor in the best national or international interests of the United States. I am confident you will agree that its passage could be damaging to consumers, to the food industry, and to our Nation as a whole.

Thank you very much.

The CHAIRMAN. Does that conclude your statement, sir?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Thank you, Mr. Wright; it is a very good statement from your point of view.

Mr. Rogers, have you any questions?

Mr. ROGERS of Texas. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I would like to refer to some of the State laws which I understand have an exemption as to application of a regulation if below a certain weight and size.

In the presentation earlier in the hearings, two cans of dog food were used as evidence to prove there was deception. One had, we will say, 8 ounces, and the other had a lesser amount in the can, but the cans were the same size. This was used as an example of deception.

I later learned that the cans were identical in weight, really, but because of the various State laws which come into play, it is a purposely understated weight even though the same package was involved. This becomes increasingly confusing to members of the committee where the samples that are shown are deceptively shown and the thorough explanation is not always presented.

Have you ever run into any examples like that in your merchandising?

Mr. WRIGHT. Not with any of our products. We have never encountered any complaints of this nature in connection with any of our products to the best of my knowledge. We are not in the dog food business.

Mr. NELSEN. I understand.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. I have one question in the interest of time. I have others, but I will just ask one question.

On page 8 of your statement, in talking about that new way of feeding babies, you say that if H.R. 15440 had been in effect you would have been unwilling to put out that product because you would be unwilling to invest that kind of money.

Mr. WRIGHT. Yes, sir.

Mr. MACDONALD. I would like to ask a simple question. Why? Do you feel that that packaging is deceptive?

Mr. WRIGHT. No, sir. We do not feel it is deceptive in any way, but we feel it is nonstandard, and if standards had been previously set for baby formulas, as they no doubt would have been had H.R. 15440 been in effect, this product in its unique package is so different, it is so nonstandard, if you will, that we would have had to have done something. We would have had to come to Washington and gone through this premarketing clearance procedure that is mentioned in the statement, and by so doing would have tipped our hands to our competition and would have destroyed our leadtime to the point where we would have been unwilling to invest the million dollars plus that we did in the development of this product. We couldn't take a chance.

Mr. MACDONALD. I am no expert in feeding babies, but that looks pretty much like a regular—well, it looks not unusual to me.

Therefore, I don't see why you wouldn't accept the fact that I think the rule of reason would prevail among your people if this bill was in effect with regard to enforcing it. What makes you feel they are going to be unreasonable?

Mr. WRIGHT. Congressman, the product in this package, we believe is quite different. There is still nothing like it on the market. I assure you our competitors are working as hard as they can to duplicate it, and perhaps they will. But there is nothing on the market today like this product. It is a completely self-contained product.

If you would like to see how it works, I would be happy to demonstrate it.

The formula inside, of course, is premixed and is sterilized. The mother keeps these on the shelf. The top of the can is sterilized and there is a shrink band on it which the mother takes off.

Mr. MACDONALD. You have explained that in your testimony. I don't want to interrupt but other people have questions. What I am asking is, and I have asked it of the previous witness, is this: It would seem to me you are perfectly protected under section 5 where the rule of thumb is that the power is given to the agency to prevent distribution of commodities for retail sales in packages in sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect.

I think just by looking at that anyone would know what it was and what it was for. I don't see how possibly you would be adversely affected by the passage of this bill with that product. The only thing about that product that is new is the idea of it. I never heard of it, frankly.

This bill doesn't give any agency the right to say whether something is practical or not. It just is to prevent deception in packaging. I don't think you would in the slightest be affected in that product by this bill.

Mr. WRIGHT. Congressman Macdonald, we feel differently. We feel that if standards had been set, as they almost certainly would be in a product that is as widely consumed as baby formula is today, we do not feel we would be prevented from marketing this product.

We feel almost certainly we would be permitted to market it. But the point we want to make is that we would have to come to Washington and have hearings as specified in this bill to see whether or not we could market this product because it differs so markedly from previously set standards for infant formulas. If we did have to come to Washington for hearings we would be——

Mr. MACDONALD. What are those standards that are set and who sets them?

Mr. WRIGHT. The standards have not been set as yet.

Mr. MACDONALD. Then what are you talking about?

Mr. WRIGHT. But they are called for in this bill we believe very substantially in section 5. This is why we object so strenuously to section 5.

Mr. JARMAN. In the same line of questioning as Mr. Macdonald's, why would you anticipate that the men and women who would enforce the law, if this is passed into law, would act in an unreasonable manner?

I have in mind your comment on page 10 where you refer to the nondairy coffee creamers having been marketed in brown glass jars. Then you say "if because the standard had been set for this product category to be marketed in brown glass jars," and so forth.

Why would you anticipate that people operating under this law would come to that conclusion in the marketing of a product like coffee creamers?

Mr. WRIGHT. For this reason, Congressman: If all the products on the shelves were marketed in containers such as this, and we came along with a container that is entirely different, the provision in section 5 which mentions facilitating price comparison could be very definitely used against us. We know it would be difficult for a consumer possibly to compare prices in this brown glass, if all the other products were marketed in this; and for us to market a product in this new package.

We are very much afraid that some person in a Government bureau who does not understand the workings of the marketplace, who does not understand the stimulus that a new or unique package would provide, would say, "Look, people will not be able to compare prices effectively if you market your product in this container and someone else markets a product in this brown glass. The two are different."

We think there are a lot of things besides price comparison that are important. We think some people will buy this even if it costs more, so we want the privilege of being able to market our product in this kind of a container.

Mr. JARMAN. It seems to me that if a Government administrator came to the conclusion, let us say, that all nondairy coffee creamers

had to be marketed in brown glass jars, it would be a very unreasonable decision. If that would be the type decision that would be made in this field that affects the American public so completely, my own opinion is that Congress would lose no time in taking additional legislative action to prevent that kind of decision.

Mr. DINGELL. Would the gentleman yield?

Mr. MACDONALD. I yield.

Mr. DINGELL. Would you tell us, please, where in this bill there is authority vested in any official of the Government to dictate whether or not something would be marketed in brown glass bottles or in white plastic pitchers?

Mr. WRIGHT. We believe that section 5 on page 7 of the bill, line 11, says that the authority shall "prevent the distribution of that commodity from retail sales in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any respect."

Mr. DINGELL. I do not want to intrude on my colleague's time, but if he would yield further I would like to pursue this point.

You are saying that this section, then, would permit a Government official, either the Food and Drug Administration of the Federal Trade Commission to dictate whether or not somebody is going to market the particular commodity we are discussing in a white plastic pitcher or a brown glass bottle; am I correct?

Mr. WRIGHT. Yes, sir. Our legal staff has gone over this bill and has gone over previous testimony. This is our opinion.

In addition, the general counsel of the Health, Education, and Welfare Department said in previous testimony before your committee, if we understand his testimony correctly, that it was his opinion that this bill would give that agency, that Government bureau, the power to standardize packages and products.

Mr. DINGELL. I am asking you; I am not asking him.

The language to which you are referring says, "Prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof in terms of weight, measure, or count." Is that correct?

Mr. WRIGHT. Yes, sir.

Mr. DINGELL. Then you are saying to me and to this committee that one of those two packages, either the white plastic pitcher or the brown glass bottle, is going to "be likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof in terms of weight, measure, or count," am I correct? Is that what your position is?

Mr. WRIGHT. No, sir. We are saying that we are afraid that someone in a Washington bureau, a Government bureau, might feel that way. We don't feel that way.

Mr. DINGELL. I think we are really getting down to the guts of the bill and I want to discuss this. You are saying, then, that neither of the two containers we are discussing is likely to deceive?

Mr. WRIGHT. We do not feel it is. We fear someone else, not knowing the situation, not knowing the problems, might so interpret it.

Mr. DINGELL. If it is your position that this is not so, then why is it that you are fearful of this section?

Mr. WRIGHT. Because we will not be interpreting the bill.

Mr. DINGELL. We are establishing the legislative history right here and now. This Congress is going to interpret the bill for the bureaucrats, not the bureaucrats for the Congress. I can assure you of that.

I say here, and you are perfectly free to challenge this, if you have anything to fear with regard to this language it is because it is your position that one of the two containers that we are discussing, either the white plastic pitcher or the brown glass bottle, is deceitful in a material respect.

Mr. GILLIGAN. Will the gentleman yield?

Mr. DINGELL. I will in a moment. I am transgressing on my friend from Massachusetts' time.

If you are fearful that this be so, then perhaps maybe that is a good argument for passage of the bill. I don't personally see that either of these containers is deceitful.

Mr. WRIGHT. I agree with you completely.

Mr. DINGELL. Maybe it is your position that one of these two containers is deceitful. If so, I would like you to tell us which one.

Mr. WRIGHT. Neither container is deceitful, Congressman, in our opinion.

Mr. DINGELL. Then why should you be here complaining about language which would prevent the distribution of that commodity, and so on, which is likely to deceive retail purchasers in any material respect? You make the allegation that neither of those is deceitful in any respect. If that be so, why should this committee be apprehensive as to something that might happen?

Mr. WRIGHT. Once again, this is a matter of interpretation. I would like to refer further to section 5(d), page 7 of the bill.

Mr. DINGELL. You have been talking about 5. If we are going to switch to 5(d), I will have to handle this at another time.

The CHAIRMAN. The time of the gentleman for questions has expired.

Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

I think there is an honest difference of opinion here in interpretation of subparagraph 5 under section 5, and possibly under subsection d, paragraph 2. Perhaps at a later date we will want to get people back here who would have the responsibility for administering this law if it is enacted, to answer some of the questions the committee has.

Mr. NELSEN. Will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Minnesota.

Mr. NELSEN. It seems to me there is even a difference of opinion as to interpretation among members of the committee. As I recall the testimony by the people from downtown, No. 1, they would set up a committee that would represent industry and administration people, and then rules and regulations would be drafted under which you would operate. Then, after the bill is to be applied, if in the judgment of these people a rule or regulation is violated, you are guilty until you prove you are innocent. That is the way I understood the explanation. I presume the example that is being exhibited is rather an unlikely one to cause trouble, but I think that anyone has a right to assume that there could be arbitrary application of any law that we

pass, and, therefore, I think it is very important that we have it very clear as to what we are intending to do.

I am sure Mr. Broyhill's suggestion will be followed up later on.

Mr. BROYHILL. I appreciate the gentleman's comment. This is in agreement with my thinking on this legislation. I sincerely believe that members of the committee must come to general agreement on the interpretation of language in this bill.

I yield to Mr. Gilligan.

Mr. GILLIGAN. I thank the gentleman for yielding.

I think it has been said previously that this is the nub of the problem in 5(d), because a new standard, if I read this correctly, is being introduced, not the standard of deception, but a different kind of deception, a deception on a rather subjective standard, to make price per unit comparisons.

The only way that I can see standards could be set forth that would assist the consumer in making price-per-unit comparisons is to require a standardization of weight or quantity which would have its impact eventually upon the packaging.

Section 5(d) provides that whenever the promulgating authority determines after a hearing that products are being produced in a form to make price-per-unit comparisons difficult, then they publish such a determination in the Federal Register and then promulgate regulations. Then the industry people may come back and request the setting up of a panel which would involve their competitors, among other things. Then they produce some involuntary voluntary standards which then can take on the weight of law if they are later confirmed by either the Food and Drug Administration or the Federal Trade Commission.

To take your example for a moment of the nondairy creamer product, if the three or four competing products were in simple jars, all of a standard weight, and you wanted to compete in price assuming for a moment that your container cost a little more so that you would decrease the amount of the product and include the extra cost of the container to stay below a certain level, I could see where your competitors might immediately rule that one out because it is a more attractive package; the price is the same; the consumer is getting a little less of the product. They would declare that that was a device that was making price-per-unit comparisons impossible or difficult.

Therefore, a producer would be unwise to get into the development of a new or novel package because he would know he would have to pass over these hurdles. If the objective is not standardizing the quantities or weights of the product on the market, then what other possible meaning can the section have? If it is not going to be employed, if it is not going to be used, then we are finding that the conditions in the marketplace today are satisfactory.

If this is unsatisfactory, it can only be in terms that we are using fractional weights and so forth, which someone who is sponsoring this legislation finds to be unattractive or unfair.

It seems to me that the inference in even submitting a bill like this to the Congress is that there are people in these executive departments who feel that standardization must be employed in order to give the consumer the necessary information that he needs to make price per unit comparisons. If that is not the intent of the language, then I don't know why this language has been submitted.



Mr. BROYHILL. I thank the gentleman for his contribution.

The CHAIRMAN. The gentleman from Oklahoma.

Mr. JARMAN. I have no additional questions, Mr. Chairman.

The CHAIRMAN. The gentleman from South Carolina, Mr. Watson.

Mr. WATSON. I have no questions, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Earlier when you and I were discussing this, we got down to the point of (d). I asked you if it was your contention that there was nothing which was "likely to deceive retail purchasers" in the white or brown containers, and if not, what would you have to fear.

I reduced it to the simple fact that if those were not deceitful, then the language of the bill—and remember, we are creating legislative history—would not apply to either one of those two containers with regard to language on lines 11 through 16 on page 7 of the bill. That would be section 5(c) (5).

Mr. WRIGHT. Well, sir, I am not an attorney. I make no pretense to be.

Mr. DINGELL. If you interpret this legislation to say that if we pass this bill and it is aimed at the two products you have there before you, that is one thing. What I am trying to do is to say that of those two, if neither one of them is deceitful; nothing in 5(c) (5) would apply to them.

Mr. WRIGHT. As I stated before, I am not an attorney. I have talked at length with our legal staff in the Pet Milk Co. I can only tell you that they expressed the very great fear that this would become a problem. They are particularly concerned about the latter section in this same bill.

Mr. DINGELL. Let us stick with 5(c) (5) because that was your principal complaint at the time I began discussions with you.

Mr. WRIGHT. But not my only complaint.

Mr. DINGELL. Let us stay with it until we have disposed of it and then we will move on.

5(c) (5), lines 11 through 16, applies, I am sure you will agree, only to commodities for retail sales in packages of sizes, shapes, or dimensional proportions which are likely to deceive the retail purchasers in any material respect as to the net quantity of the contents thereof.

Now, I will ask you flatfootedly, Do either of those two packages to which we have been referring in your testimony fall into the category of packages in sizes, shapes, or dimensional proportions which are likely to deceive retail purchases in any material respect as to the net quantity of the contents thereof?

Mr. WRIGHT. In our opinion, Congressman, they do not. We fear what opinion other people might have.

Mr. DINGELL. Having then established that point, let us go on now to (d). We have established that in your opinion 5 would not—

Mr. KEITH. Would the gentleman yield?

Mr. DINGELL. In a moment I will be glad to yield.

Having established that in your opinion 5 does not apply, let us go on to (d).

I will yield to my friend.

Mr. WRIGHT. I did not state, Congressman, that 5 would not apply. I said this was a matter of interpretation. In my opinion, these packages do not deceive. I said earlier that other people, particularly some Government bureau, might feel otherwise.

Mr. GILLIGAN. Would the gentleman yield on just that one point, please?

Mr. DINGELL. You don't feel that they do apply, though am I correct?

Mr. WRIGHT. I do not feel the packages deceive. I feel that this particular section could be used by a Government bureau to tell us, contrary to our belief, that they do deceive.

Mr. DINGELL. You don't regard them as deceitful?

Mr. WRIGHT. I do not regard them as deceitful.

Mr. DINGELL. I yield to the gentleman.

Mr. GILLIGAN. Can you tell by looking at those two packages what they contain? Are you deceived by the contents thereof, the white jar and the brown jar? Is there any way of telling without examining the label how much of the product is contained in either of those? Is that deception under the meaning of this language?

It doesn't refer to label here. It says the size, shape, or dimensional proportions of the package deceive the retail purchaser in any material respect as to the net quantity contents thereof.

I would say that without the label being there it would be impossible for anybody to tell what is in those packages. Therefore, that could be deception.

Mr. DINGELL. Properly labeled—

Mr. GILLIGAN. But it doesn't refer to the label. The language is the size, shape, or dimensional proportions. It specifically excludes any reference to label. My contention would be to look at those two products on the shelf, that I can see through one and evidently see there is a column of whatever it is in there of certain dimensions, but the other I can't see through at all. I don't know whether it is half filled, a quarter filled, I don't know what is in it at all.

I am thereby, I would say, deceived or at least kept ignorant as to the contents of the package by its size, shape, dimensional proportions, and opacity.

Mr. DINGELL. Let us go on.

You have been talking about (d). What is your objection with regard to (d)?

Mr. WRIGHT. Primarily line 25, where the promulgating authority will promulgate, subject to provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights, quantities, or fractions or multiples thereof in which any consumer commodity shall be distributed for retail sales. This to us means standardization.

Mr. DINGELL. You are aware that those lines refer to the language appearing above in lines 17 to 22 under subparagraph (d); am I correct?

Mr. WRIGHT. That is correct.

Mr. DINGELL. That says whenever the promulgating authority determines after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is distributed for retail are likely to impair the ability of consumers to make price-per-unit comparisons, such authority shall—and so on. You understand this is pursuant to the Administrative Procedure Act; am I correct?

Mr. WRIGHT. Yes, sir.

Mr. DINGELL. That affords adequate opportunity for the industry to appear and present its views; am I correct?

Mr. WRIGHT. This is one of the things that bothers us.

Mr. DINGELL. You are also aware that you may, as industry, come forward and halt the entire proceedings by accepting the voluntary standards; am I correct? You may thereby police yourself, am I correct, to remove the Government policing which you so greatly object to; am I correct?

Mr. WRIGHT. Yes, but we believe this particular section of the bill is extremely confusing.

Mr. DINGELL. We are again writing legislative history. As I read the language, it says that you can go ahead and can have voluntary standards in lieu of governmental standards by some bureaucrat; am I correct?

Mr. WRIGHT. Yes, sir. But what happens, Congressman, if we have a new product? We haven't been in the product category up to a certain point. All of our competitors have previously, voluntarily, if you will, set these standards.

Mr. DINGELL. You tell me where in this bill there is a premarket approval of packaging or packaging sizes, premarketing?

Mr. WRIGHT. We believe this is implied. We don't believe it would be possible to market if the standardization provisions of this bill were approved, and we believe it is a standardization bill as presently written. We don't believe, and our legal department feels quite strongly on this, that we would be able to market nonstandard products or packages without a premarketing clearance.

Mr. DINGELL. Since you are here to tell us, you tell me where that language is in the bill.

Mr. WRIGHT. This has come up in various testimony because people have asked this question before.

Mr. DINGELL. I will defer to my colleagues, Mr. Chairman. Perhaps the witness can supply that information.

Mr. WRIGHT. This is on page 7, once again, line 17: "Whenever the promulgating authority determines after a hearing conducted in compliance with section 7," et cetera.

Mr. DINGELL. Nowhere in that language is the requirement that you submit your commodities to any Government agency for premarketing clearances.

Mr. WRIGHT. We believe this is implied in this section.

Mr. DINGELL. You tell me what language authorizes premarketing clearance by a Government agency.

Mr. WRIGHT. This is one of the things that worries us about this bill. The bill is not clear, but we think it is clear in its implications. It says there will be hearings.

Mr. DINGELL. But you are writing legislative history. If you want to write some premarket clearances you have a chance to do it now. I would like to see the language in there which says any Government agency may clear a product before it is marketed. Can you tell me where that is?

Mr. WRIGHT. We believe this is what will be the net result of this legislation.

Mr. DINGELL. I did not ask you what the net result is. Where is there language in there which says that some bureaucrat can require you to clear a package size and shape before you market it?

Mr. WRIGHT. If we are coming into a product category in which we have not been active before, we are not going to enter that cate-

gory without knowing whether our product, in the opinion of a Washington bureau, is likely to deceive or is likely to vary too much from existing products. This means we, of necessity, are going to protect ourselves and protect whatever investment we have in that product by coming to Washington ahead of time and saying, "Look, this is a product we want to enter the marketplace with. Can we do it?"

Mr. DINGELL. You are saying you feel compelled to do that, but not that there is any language which would require that.

Mr. WRIGHT. I am saying this would be the net result of this legislation. We would have to come to Washington for premarketing conferences.

The CHAIRMAN. Can the gentleman come back to a committee meeting tonight at 7 o'clock?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. The committee is recessed until tonight at 7 o'clock.

Mr. KEITH. Mr. Chairman, Mr. Macdonald and Mr. Dingell were questioning the witness while I was trying to get a question in. The questioning was on legislative history and such that it might leave the impression that the committee concurred in the line of attack mentioned.

Mr. DINGELL. If the gentleman will yield, I am not sure that I will concur.

The CHAIRMAN. I would say that every member of this committee has a right to question every witness as long as he keeps it within the bounds of propriety.

Mr. KEITH. But I would like to know how long will the questioning continue, Mr. Chairman. Will we have the 5-minute rule?

The CHAIRMAN. That is right.

The committee will stand in recess until 7 o'clock tonight.

(Whereupon, at 12:20 p.m., the committee recessed to reconvene at 7 p.m. the same day.)

#### AFTER RECESS

(The committee reconvened at 2 p.m., Harley O. Staggars, chairman, presiding.)

The CHAIRMAN. The committee will be in order.

Mr. Wright, would you take the stand, please?

**STATEMENT OF ARTHUR E. WRIGHT, JR., DIRECTOR OF PUBLIC RELATIONS, APPEARING IN BEHALF OF THEODORE R. GAMBLE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, PET MILK CO., ST. LOUIS, MO.—Resumed**

The CHAIRMAN. As I said this morning, I was interested in your testimony. I believe I asked you the question that if certain provisions were delineated from the bill, would you favor the bill?

Mr. WRIGHT. Sir, if the provisions regarding standardization were eliminated from the bill, the bill would be far more acceptable to us. There is no question about that. However, I would like to point out that there are other provisions in the bill which we do not find fully

acceptable, and we would recommend their deletion or their alteration before the bill is passed.

The CHAIRMAN. You may present that information for the record, if you have it with you.

Mr. WRIGHT. Just generally, sir, we were talking about provisions for standardization. This, without question, is the section of the bill which we object to most. This is the section of the bill which would impose the greatest hardship upon the industry, certainly upon our company. It is the one which would cause us the most problems, it is the one which would increase costs the most to the consumers.

However, there are other parts of section 5. For example, the so-called ingredient statement. We believe this presents some real problems.

We believe that section 5(c)2, in which servings are defined, also could present some real problems. We have a large and substantial and able staff of home economists who deal daily in this problem. I can assure you that they have a most difficult time in determining what constitutes a serving.

There is other language particularly in section 5 that we would certainly hope would be eliminated or at the very least modified.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I do not find in the paper which you read for Mr. Gamble any figures as to what the additional cost would be to your company, if the bill were passed in its present form.

Mr. WRIGHT. That is correct. We did not have them in the statement. We hoped to get such figures for you. Because of our extremely wide line of products, literally thousands of different products, we almost didn't know where to begin. Rather than give you information that would be misleading or not particularly meaningful, we found that we couldn't at this point in time tell you exactly how much it would cost, because we don't know whose standards are going to be set.

We don't know whether they are our standards, somebody else's standards, the Government standards. We don't know what products they will cover. This will be an evolving matter, if this bill is passed in its present form. But we do know this, that acquiring, installing, and operating new packaging lines is a very expensive proposition for us.

To be sure, we have to do this on occasion and we therefore know how much it costs us to install new packaging lines. Depending on the products, it could cost us anywhere from a few thousand dollars in some cases to as much as \$500,000 or \$750,000 for one new packaging line.

Mr. YOUNGER. You heard Mr. Roll this morning, did you?

Mr. WRIGHT. Yes, sir.

Mr. YOUNGER. He gave very fine concrete examples of cost and estimated that their annual cost would run approximately 5 percent. Of course, that would have to be passed on to the customer; they can't absorb that.

If you can, I think the committee would appreciate it if you filed for the record an estimate of the cost, and it would be only an estimate.

You can't tell exactly because it is impossible to say at this time what kind of standards might be adopted. But I think it would be well if you would file with the committee some estimate of the cost to you and what it would mean to the purchasers.

Mr. WRIGHT. We will try to take perhaps one product category out of the many thousands that we manufacture and try to indicate to the committee how much it would cost us if we were required to adopt different standards from those we now utilize, and if we were required to conform to a different set of standards and change our packaging accordingly.

Mr. YOUNGER. So far, there has been no evidence that I have heard, and I think I have heard most of it, to the effect that amendments to the Pure Food, Drug, and Cosmetic Act as well as the Federal Trade Commission Act would not solve the problem. There were two cases. One was mentioned by the Chairman of the Federal Trade Commission who said that they are not sure of their right to proceed against an industry if they found that the entire industry were practicing deception.

Would you see any reason why that authority should not be given to the Federal Trade Commission?

Mr. WRIGHT. I am not a lawyer, but as a layman, I can see no reason why such authority should not be granted. Our position has been as indicated in Mr. Gamble's statement, that what is probably needed more than anything else right now is simply additional personnel and additional money for additional enforcement on the part of FDA and FTC.

We think this would solve virtually all of the current problems if such problems are the concern of Congress.

Mr. YOUNGER. I think that is true, if they had additional personnel, probably far less personnel than would be needed in this new bureau, they could do a better job, because they know what they are doing and this new bureau would merely be floundering around with new problems that they are not accustomed to dealing with.

Mr. WRIGHT. I agree with you completely, Congressman.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Thank you again.

Mr. WRIGHT. Thank you.

The CHAIRMAN. The next witness will be Mr. Arthur E. Larkin, Jr., executive vice president, General Foods Corp.

**STATEMENT OF ARTHUR E. LARKIN, JR., EXECUTIVE VICE PRESIDENT, GENERAL FOODS CORP.; ACCOMPANIED BY MISS ELLEN-ANN DUNHAM, VICE PRESIDENT IN CHARGE OF GENERAL FOODS KITCHENS**

Mr. LARKIN. Mr. Chairman, and the two members present of the committee, my name is Arthur E. Larkin, Jr. I am executive vice president of General Foods Corp. Our company manufactures and sells to retailing organizations a wide variety of packaged food products, principally in the convenience foods categories.

Among our better known brands are Maxwell House, Sanka, Birds Eye, Post, Jello, and Log Cabin. Our headquarters is in White Plains, N.Y.

Accompanying me today on my right is Miss Ellen-Ann Dunham, vice president in charge of General Foods kitchens. She and her colleagues are concerned with dealing directly with consumers. Miss Dunham has appeared twice before committees of the Senate to testify in opposition to S. 985 and its predecessor bills.

If questions arise today in her area of professional competence, she will be pleased to answer them and with your permission I shall refer them to her.

I have filed with the clerk of the committee a statement which sets forth in detail the reasons for our vigorous opposition to the sections of H.R. 15440, which provide for standards regulating net weight or content and size, shape, and dimensions of food packages.

In this brief oral statement I shall emphasize only two or three points of special concern to my company. Allow me to illustrate some of these with examples from among our products. Miss Dunham has in hand an attractive, valuable, heat-resistant glass carafe filled with instant Maxwell House coffee. In a period of 3 years, more than 20 million American housewives bought instant coffee in this special package. That comes out to one glass carafe for every three homes in the United States.

Why was this instant coffee package such a noteworthy success? Because the consumer perceived in it a substantial value. Unless a great many of them bought more than 1, 20 million American consumers chose this package of soluble coffee over the others on the grocery shelves because they like instant Maxwell House and because they wanted the carafe. They perceived the real value inherent in the offer—the right combination of product quality, attractive reusable package, and reasonable price.

Now, Miss Dunham has in hand a handsome and we think useful serving pitcher filled with Log Cabin sirup. This special package also was a great hit with our customers, and our sales figures indicate that one may be found in every ninth home in the United States. In this package, the quantity of the sirup is different from that in our normal package. We did this purposely, not to deceive, but to offer consumers a pitcher of most useful size.

Apparently, that did not deter them from perceiving the value and making the purchase.

Next, we have two packages of Great Shakes Mix, a flavored milkshake mix which is a favorite of mothers of young children because it helps them get the little ones to drink more milk. The innovation represented by this product lies in the fact that it permits youngsters to make their own milkshakes.

The rectangular package is our standard one. It contains 10 pouches, each of which mixes with 8 ounces of milk to make a delicious milkshake. The hexagonal package contains a handy plastic shaker and inside it are four of the pouches of Great Shakes.

We have found that the shaker is an important factor in the introduction of this product because most families do not have the proper utensils to make a milkshake. Therefore, the homemaker views the special package as a favor. We believe that all three of these successful packages which delivered real value to the consumer may have been prohibited if there were Federal standards regulating net con-

tents as in section 5(d)(2) or package shape as in section 5(c)(5) in these product categories.

Two of them have net weights different from the regular packages of the products and all three are radically different in shape and dimension. If time permitted, I could recite many more examples from our existing product line.

I do hope these few brief illustrations have persuaded you that we have very real grounds for our grave concern over the impact of product standardization on the food industry and the consequent detrimental effect on consumers.

Ours is a dynamic industry in which a steady, rapid pace of technological advance, especially in recent years, has led to many consumer benefits, and very real advantages for the national economy. Putting shackles on that technical progress which is what we believe compulsory standardization would do, cannot possibly be in the national interest.

Allow me to speak for a moment about two such technological advances with which I am most familiar. In the food industry we have recently achieved breakthroughs in two different techniques for product improvement.

We in General Foods are now market testing a freeze-dried soluble coffee which is clearly superior to conventional instant coffee. We are also on the threshold of similar achievements with agglomeration, which is another food processing technique with promising new applications.

Freeze drying results in a better flavored, more concentrated, and denser product. Agglomeration improves color as well as flavor in some products and enhances their convenience in use. Agglomerated products tend to be less dense and more fluffy than regularly processed products. The density of a product obviously relates to the question of net content or net weight, and it could relate to the size and dimension of packages.

This is why I make the point of these two technological developments in a discussion of standardization provisions of H.R. 15440.

Allow me to illustrate by citing instant coffee as an example. If packages of instant coffee were now standardized by regulations fixing net contents as in 5(d)(2), sizes, shapes, and dimensions as in 5(c)(5), we would have difficulties with either our freeze-dried product or an agglomerated product.

The freeze-dried product being more dense than other soluble coffees would result in a slack fill in a package of standard size under 5(c)(5). The agglomerated product, on the other hand, would not meet the requirements of standardized net weight or content under 5(d)(2) since it would take a larger package to hold a given number of ounces.

I hope you can see from this brief explanation why we are concerned. These examples of recent achievements in the coffee field are but two of many in our product development stable.

As technology advances, and we are expending about 1 percent of our net sales each year to make the advance, more such promising breakthroughs will surely come along. Some of them, at least, inevitably will affect the way we package our products.



I am fully aware that standards can be amended and that procedures are provided for changing them. But as a practical man, I am equally convinced that the necessity of appearing before a Federal agency, revealing confidential details of new processes, and waiting long periods for approval, will be a serious deterrent.

General Foods endorses any reasonable action to enhance protection of consumers against fraud and deceit. We are in complete accord with that portion of the bill's objectives. We have, however, stated a number of times that we believe no new legislation is needed to provide consumer protection against fraudulent or deceptive food packaging.

We are convinced that present Federal and State laws adequately enforced give the American consumer the proper governmental protection. And we believe further that the vigorous competition that is the foundation stone of our competitive enterprise system also provides a real measure of protection.

No business can survive in this system if it makes a practice of fooling or cheating customers. Our real concern, then, derives from these sections of the bill aimed at standardization of size, shape, dimensions and net weight of content of food packages.

We are particularly troubled because these provisions are predicated on the basis that consumers shop on the basis of price comparison alone. Our experience convinces us that this is not valid. We know the consumer is guided in her purchases by the values she perceives in a product and in her thinking, the price of the product then being related to these values.

For this reason, we are apprehensive about the potential damage which would result from legislation which purports to help the consumer make price comparisons, but, in fact, limits her freedom of choice in the marketplace.

I appreciate, Mr. Chairman, the opportunity to appear before you. (Mr. Larkin's full statement follows:)

**STATEMENT BY ARTHUR E. LARKIN, JR., EXECUTIVE VICE PRESIDENT, GENERAL FOODS CORP., WHITE PLAINS, N.Y.**

My name is Arthur E. Larkin, Jr. I am executive vice president of General Foods Corporation. My office is at our headquarters in White Plains, New York. My responsibilities include executive supervision of both the production and the marketing functions of our company.

The production and distribution of packaged food has constituted the bulk of our business for all the years of our company's history. Approximately 20 million packages of our products are purchased by consumers in retail stores each shopping day. Some of our better known brands are Maxwell House, Birds Eye, Post, Jell-O, Log Cabin, and Sanka.

On two previous occasions an officer of General Foods has come to Washington to describe for Senate Committees the reasons for our opposition to proposals to regulate food packaging similar to the bills your Committee is considering today. We asked for permission to testify before your Committee because we believe the bills before you—particularly H.R. 15440—are sufficiently changed from the Senate bills to warrant additional comment by us.

Our witness at the Senate Committee hearings is here with me today. She is Miss Ellen-Ann Dunham, our vice president in charge of General Foods Kitchens. Miss Dunham is widely respected as a professional home economist and a leader in the food industry's efforts to study consumer attitudes and promote consumer education. She supervises a department staffed entirely by women. Like Miss Dunham, many of her colleagues are professionally trained in the fields of home

economics and nutrition. As the risk of incurring her ire, I can tell you that she has been affiliated with our company for 34 years. Miss Dunham will be glad to answer any questions which may arise in her area of professional competence. With your permission I shall refer them to her.

Miss Dunham's department replies to the voluminous mail we receive every day from consumers. These letters are coming to us at the rate of 135 thousand per year, and the flow is increasing. All of them are read, and all receive thoughtful replies. These letters added to our total consumer research effort, which put us in touch with nearly a million homemakers each year, provide us with a large-scale contact with consumers. We believe therefore, that we are well informed as to their attitudes, their likes and dislikes. We listen to them, we correspond with them, and we act on this knowledge.

Much of the discussion of proposals to regulate packaging, during the five years or more that such bills have been before the Congress, has centered on the obligation of a government to protect its citizens against fraudulent or deceptive labeling and packaging. With that we have no quarrel.

We have stated in previous testimony that we believe such legislation is unnecessary. We still hold that belief. It is our conviction that adequate consumer protection against fraud and deception may be achieved through proper enforcement of federal and state statutes already on the lawbooks.

A major objective of H.R. 15440 is the standardization of food packages as a means of helping the consumer to make price comparisons between products. This is stated in the "Declaration of Policy," and it appears in paragraphs 5(c) and 5(d). In the former, the bill would authorize regulations when needed "to facilitate price comparisons," and in the latter it provides for regulations when the weights or quantities of a consumer product "are likely to impair the ability of consumers to make price per unit comparisons."

This increased emphasis on helping the consumer to compare unit prices in the marketplace suggests to us that the authors of this proposed legislation give more weight to price comparison than it should have. From our experience we know there is a fallacy in this. We know that, in the consumer's mind, the value of a product is the quality and convenience she perceives in it offset by the price she is asked to pay for it. There is a delicate balance of the components in this price-value equation. Each has its proper weight in the careful calculation the consumer makes before she buys. No one must be out of proportion, or the balance will be disturbed. We urge you not to overemphasize or overregulate the price component in the equation.

We feel one other general comment regarding the bills under study is needed. If, despite the earnest objections which have been raised, the Congress sees fit to enact further legislation governing packaging, we assume that the new law will treat private label products and manufacturers' brands alike. I am advised that the Congressional history of this H.R. 15440 and its predecessors leaves room for argument on this subject, particularly on the question of "off-labels." To avoid the possibility of giving an unfair competitive advantage to private labels, I would urge that any legislation enacted contain an express provision requiring any implementing regulations to give like treatment to private labels and manufacturers' brands.

Let me turn now to comments about specific sections of H.R. 15440:

As regards the provisions of Section 4 which call for legible and informative labeling, we have no quarrel with their purpose. My company continuously examines all of its packages and labels to be certain that they contain the information which, from our long experience, we know the housewife wants. As a matter of policy we adhere to the provisions of the model state regulations as regards placement of net contents on the package, type size, etc.

We have no objection to the prohibition of qualifying words or phrases supplemental to the statement of net contents. By the same token, we do not oppose the regulation provided for in 5(c) (1) to standardize the language characterizing the sizes of consumer product packages.

We are troubled by the proposal in 5(c) (2) that servings be standardized by a governmental agency. Miss Dunham has pointed out in previous testimony the pitfalls in this proposal. To paraphrase an old adage, one man's portion may be another man's half-portion, and a federal standard which would fit all homes and all appetites in all parts of the country is simply not feasible. In our own case, when we indicate servings on a label, we also say how big the servings are if that is feasible. We say, for example: "Six servings, one-half cup each."

We object vigorously to Section 5(c) (3), which deals with promotional labels.

We believe it is too sweeping and too vague. The power to regulate legitimate promotional devices which it would bestow on the promulgating agencies is certainly the power to prohibit them. This is borne out by the language of the bill itself. In paragraph 5(c) it speaks of "regulations containing prohibitions."

Presumably the intent of this section is to curb widespread use of cents-off labels. We acknowledge that it could conceivably control this promotional device, and, indeed, it could be invoked to outlaw it. We fear that it could also be applied against a variety of other effective, time-tried, and useful merchandising practices. Unless it is limited or clarified, this section, as we read it, could be invoked to prohibit many special merchandising offers which are of real value to the consumer—bonus packs, secondary use containers, and other similar devices.

General Foods' position on cents-off labels in the coffee industry was set forth in a statement to the Federal Trade Commission earlier this year which was included in the record of its hearing on this subject. In it we indicated we believe certain guidelines for this promotional practice might be advisable. I have a copy of that statement here today if the Committee wishes it for the record. We believe the six-month moratorium on such labels for coffee was a proper exercise of its authority and would have served a useful purpose if it had applied to all processors. We hold, therefore, that such a provision as 5(c) (3) is unnecessary.

We believe also that the language and intent of paragraph 5(c) (4), which deals with ingredient information, are unduly vague. We have no quarrel with the placement of appropriate ingredient information on the label of a consumer product. Indeed we have followed the practice of naming ingredients for many years, as required by the Federal Food, Drug, and Cosmetic Act. But we believe that this paragraph as written needs clarification as to what kind of information it calls for and in how much detail.

The sections of the bill which give us gravest concern are those which provide for regulations to standardize sizes, shapes, and proportions of packages and net weights and quantities. These are paragraphs 5(c) (5) and 5(d) (2).

We are convinced that those sections are potentially harmful, both to consumers and to the food industry. We believe they would tend to discourage or inhibit the creativity, the incentive to innovate, which characterize our industry today and which have been responsible for providing American consumers with a variety of convenience foods. We believe they would retard further development of convenience foods and further advances in package design which add important consumer values. Thus we believe this legislation would redound to the detriment of the consumer rather than help her as it purports to do.

Let me support this position by means of several illustrations from our own business.

Among the more successful of General Foods' recent merchandising projects was our offer of Instant Maxwell House Coffee in an attractive, heat resistant glass carafe. By purchasing her instant coffee in this special package, the consumer acquired a useful and decorative carafe as an "extra" during her regular shopping for daily menu items. It was not only a useful household item, but it was one of substantial monetary value. If there were any doubt of its value to the housewife, that doubt was dispelled by the fact that more than 20 million of these special packages of instant coffee were sold during the three different periods in which the offer was made in a three-year time span. This comes out to one carafe for every three households in the United States. It also was many times the total number of glass carafes which the Corning Glass Company, our supplier, had been able to sell in all the years of marketing similar carafes.

Here, I submit, we have a dramatic example of specialized packaging from which everybody benefited. The housewife perceived real value in the offer, and she got a bargain. General Foods profited from an increase in soluble coffee sales, grocers enjoyed increased volume, the glass company felt the impact on its sales. And, I suspect, some of the effect of increased consumption may have been felt as far away as the coffee-producing nations.

As we read this bill, such a project would have been impossible—or at least discouragingly difficult—if there were standards governing the packaging of instant coffee.

Shortly after our success with the coffee carafe, and perhaps in large part because of it, we offered the consumer another of our products in a valuable reusable container. This time it was a handsome glass pitcher filled with Log Cabin Syrup. And this time the net quantity of the product was different from that in our regular package. This was done to present a pitcher of optimum

size from the consumer's point of view. So attractive was this unusual package and so welcomed by the housewives of this country, that we estimate one of these pitchers may be found in every ninth home in the United States.

As we interpret H.R. 15440, we could not have considered this successful promotion—which obviously provided the consumer with something of value—if there were a regulation standardizing the net contents or the shape or dimensions of packages in which syrup is sold.

There are a number of illustrations of special packages among our present products and future marketing plans, all of which could conceivably be prohibited by regulations under Section 5. At the present time, for instance, we are distributing Great Shakes, a flavored milk shake mix, in both a standard package of 10 individual serving pouches and a special hexagonal carton which contains four such pouches packed inside a plastic shaker. We have found that the shaker is an important factor in the introduction of this product because most families do not have the proper utensil to make a milkshake. Therefore the homemaker views the special package as a boon.

Although our Great Shakes is a new product, flavored milk supplements themselves are what we consider a mature product category. If standards for packaging flavored milk supplements had been in effect five years ago, this successful innovation would have been difficult if not impossible.

I could describe other such added-value packages currently on the market or in our future plans, but I hope I have made my point without prolonging the list of examples. Let me turn now to the impact of standardization on product development and improvement.

We fear that standards for net weight or content would lead to serious difficulties in our continuing effort to improve our present products or develop new versions of established ones. This is especially true of formulated products such as cake mixes, or other dessert mixes, which may vary in net weight for a number of reasons. At the present time we have 13 regular cake mixes on the market; seven of them weigh 18 ounces, one weighs 18½ ounces, four weigh 19 ounces, and one weighs 20 ounces. All of them make a cake of the same size, and—more importantly—all of them call for two eggs in the recipe. If we were bound by a standard requiring all cake mixes to have the same net weight, conceivably the recipe might call for 1½ eggs. Poor a cook as I am, I know that might be difficult to accomplish in the kitchen.

Our continuing program of product improvement sometimes leads to changes in formula which change the net weight. Or we sometimes change it to permit a new recipe developed by our kitchens which is easier and more convenient for the consumer. Again, a standard would impede this.

Our competitors' cake mixes differ slightly from ours in net weight. Checking two of the best known competitive white cake mixes recently, I found one weighs slightly less than ours and one slightly more. They make cakes of somewhat different characteristics from ours. This is because those companies put recipes on their labels which their consumer research tells them are preferred by consumers. We obviously disagree. I hope we will never all be regulated by a standard for cake mixes which forces us all to make the same product.

One final comment on this point: Assume we were governed by a standard for a certain product and we decided on a formula change to achieve product improvement or to adapt to a better recipe for consumer use. Presumably this would result in a change in net weight. We interpret the bill to mean that we would be required to petition a federal agency to change or amend the standard. This could involve a question of trade secret disclosure or costly delay, and we might conclude "the game isn't worth the candle."

For all of these reasons, gentlemen, and for still another we vigorously oppose the sections of H.R. 15440 aimed at establishing standards for package shapes and sizes and for net weights or contents of packaged food products. Our final reason is the threat, which we believe is implicit in these sections, of a reduction in the variety of products available to the American consumer. As firm believers in the American economic system—our creative, competitive enterprise economy—we must oppose anything which we believe will restrict or inhibit the consumer's complete freedom of choice in the marketplace.

Our system, of course, has its flaws. It has not yet reached perfection in its operation, nor is it likely to in our lifetimes. But its virtues far outweigh its shortcomings. One of its virtues, in my view, is the freedom enjoyed by the modern consumer to choose from a wide variety in making her purchases. If

there are 8,000 different items in the average supermarket today as compared with 2,000 some years ago, or if there are 18,000 items some years hence as compared with 8,000 today, it's because the consumer wants it that way. From my years of experience in making and marketing consumer goods, I can assure you that no one of those 8,000 items will continue to be produced and occupy shelf space if the customers don't take it off the shelf and put it in their shopping bags. This is the strength of our system. Each product must win its right to survival. Each must be sold in sufficient quantity to be profitable. And each consumer must be served as she wishes to be served.

If a federal agency tells one consumer that she may not purchase coffee or cereals in the size package she prefers, if it says she must buy frozen vegetables only in pounds or certain fractions of pounds, her freedom to choose has been restricted, and the system has been weakened. This, too, is why we at General Foods are concerned about the implications of imposed standardization in packaging.

In conclusion, gentlemen, we feel today as we did in 1965 and 1961 that there is already adequate protection of consumers against fraudulent or deceptive packaging and labeling. Vigorous enforcement of present state and federal law will provide it. As far as H.R. 15440 is concerned, we are in sympathy with its objectives as regards informative labeling, but we question the need for it. We are disturbed by the sweep and vagueness of the paragraphs dealing with cents-off labeling and ingredient information, and we urge their clarification. We are gravely concerned about the paragraphs of Section 5 which would provide for the standardization of package sizes and shapes and of net weight and content. We are particularly concerned because these provisions are predicated on the assumption that consumers shop on the basis of price comparison alone. Our experience convinces us that this is not valid. We know that the consumer is guided in her purchases by the values she perceives in a product, and, in her thinking, the price of the product is related to these values. For this reason we are apprehensive about the potential damage which would result from legislation which purports to help the consumer makes price comparisons but in fact limits her freedom of choice in the marketplace. Such legislation, we are convinced, would work to the detriment, not the benefit, of the consumer and would inevitably injure the system of food distribution which has made this nation the world's best fed at the lowest cost.

If you are convinced that this Committee must report out a bill to regulate packaging in this session of the Congress, I urge you to delete Section 5 from H.R. 15440. As I have said repeatedly, we endorse any reasonable effort to strengthen the protection of consumers against fraud and deceit. But this bill goes far beyond that. Under its objective of facilitating price comparison it would provide for stultifying standardization of products and packages which would inevitably be detrimental to consumers. From our own experience in the market place and from our large-scale consumer contacts, which total a million a year, we see no evidence of consumer demand for this legislative action. We find no basis for the assumption that America's housewives want the government to help them make price comparison among food products, especially if such a legal remedy would affect their freedom of choice among products. I am sure I speak for the food industry when I say we would be happy to cooperate in a scientific study to determine whether such a consumer demand in fact exists. Meanwhile I respectfully suggest that the Committee members study the situation in their own districts to determine to their own satisfaction the existence of such a demand among their own constituents before taking such a drastic step as this bill provides in Section 5.

Thank you for the opportunity to appear before your Committee.

The CHAIRMAN. Thank you.

Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

Sir, I wasn't quite sure whether you oppose H.R. 15440 or not. You said there were many good things in it, as I listened to your testimony, and yet you said there were some parts of it that should not be included. Is it the position of the company you represent that this bill should be passed or not passed?

**MR. LARKIN.** As stated, Mr. Macdonald, I feel that there is adequate legislation on the books today to protect the American consumer against fraud and deceit. However, if in the wisdom of the Congress they feel that legislation is needed, then there are specific sections of this bill that we think we can live with. There are other sections we think should be deleted, and others that we think should be amended.

**MR. MACDONALD.** Could you break that down a little bit? What do you think should be left in the bill?

**MR. LARKIN.** We have no contest on sections (a), (b), and (c) (1). When we get to section (c) (2), and I am talking of section 5—

**MR. MACDONALD.** You have no problems with the bill up to section 5?

**MR. LARKIN.** Up to section 5, that is right. And we have no objections to (a), (b), and (c) (1) in section 5.

When you get to section (c) (2), and you start talking about servings, I would like to call on Miss Dunham, if I may, to clarify servings a bit. Then we have a suggestion as to the serving section.

**MISS DUNHAM.** Food processors such as General Foods include serving statements, not as a marketing device, but as a service to homemakers. Although the sufficiency of a serving will vary depending upon the appetite of different members of the family for a particular food, serving statements nevertheless serve as useful guides to millions of women both in food purchases and planning for their families.

It has been almost impossible for Government—and I am specifically referring to the Department of Agriculture and other such departments—to determine a standard serving, or what a serving is on any type of food.

This is difficult because human beings vary, their appetites vary, and their nutrient requirements vary. In other words, the metabolism of an individual differs one from the other.

We know of no scientific study, and we have researched this field, that can verify what a serving is. The question has come up in relation to servings when we indicate that a package will make four servings, one-half cup each, as to what a cup is. If I may at this time, I would like to explain it, unless you have something to ask me on servings.

**MR. MACDONALD.** I think it has been established what a cup is. Frankly, before these hearings I didn't know. I now know that a cup is a cup and it is in Webster's Dictionary and you can look it up, et cetera.

Going along with your definition of a cup will not be necessary, I don't believe. I am still not quite clear what a serving is.

**MR. LARKIN.** Mr. Macdonald, if I may, let us suggest to the committee that rather than attempting to define servings, the subsection might require that if a manufacturer includes a serving statement on a label—and there are many products where servings mean nothing to the consumer and they are not included—if he chooses to put servings on a label, he shall also specify the size of the serving in terms of weight, measure or count.

For example, makes four servings, one-half cup each, or six servings, 3 ounces each. If the Congress wants a better description of a serving, fine, where it applies. But an attempt to define servings we think leads to a terrible morass.

Mr. MACDONALD. I couldn't agree with you more. That is my point. If it leads to misunderstanding, why have it on the label in the first place?

Mr. LARKIN. Miss Dunham knows better than I. We put it on there as a service to the housewife to give her a better indication.

Mr. MACDONALD. But if she doesn't know what a serving is, how is it a guideline?

Mr. LARKIN. In each case, Mr. Macdonald, when we say a serving, we define what we mean by a serving. If we say on a package, four servings, we follow it up with one-half cup each, or four servings, 8 ounces each, if it is a 12-ounce package.

Mr. MACDONALD. One last question, if I have time, Mr. Chairman.

I see on the Maxwell House Coffee jug about the special offer, and then it goes into small print under that. What does the small print say?

Mr. LARKIN. It says "Heat-proof coffeemaker made of Corning heat-proof glass when you buy the 10 ounces of coffee inside." It is a special offer.

Mr. MACDONALD. In other words, you are buying two things at once. You are buying a coffee pot and the coffee, is that right?

Mr. LARKIN. You are buying this carafe at far less than it is offered at retail. We have offered it from no increase in price to an upcharge of 40 cents. Actually, what happened in our company was that we built a special packing line and then amortized the cost of the line over the volume so that as we had paid for our packing line we can offer the consumer a better product, a better package, for no extra money.

But, were packages standardized into 2-, 6-, 10-ounce sizes, with the current size, shape and dimension, this we would not be able to do. We think it is a real bargain to the housewife.

Mr. MACDONALD. My time has expired.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Mr. Chairman, I would like to put my questions at a later time.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. We have had other testimony with regard to the development of a special package. Where the manufacturer spends quite a bit of money on developing a product of that kind, if this bill were passed the way it is, he would have to bring that package to the Secretary or someone lower to get that approved, thereby releasing to the public and to his competitors what he has probably spent a lot of money developing. Is that true?

Mr. LARKIN. Yes, that is as I understand it. It says to me that if it wouldn't be lost altogether, it certainly would deter the innovative effort on the part of food manufacturers to do this kind of thing. It would be slowed down. This is a cost to the consumer that is intangible and incalculable, but it is very real in my mind.

Mr. YOUNGER. You certainly would lose the impetus of getting ahead of your competitor in developing that product.

Mr. LARKIN. Yes, we would.

Mr. YOUNGER. He could go out and take advantage of the money you have spent in developing, researching, and producing an article of that kind.

Mr. LARKIN. Yes, that is very true. As I say, if it wouldn't stop us altogether, it would certainly slow us down.

Mr. YOUNGER. It would be a handicap.

Mr. LARKIN. Yes, sir. We would lose the leadtime now available to us for a good idea.

Mr. YOUNGER. No one in Congress wants to be in the position of adding additional handicaps to our economy and to the manufacturers, the people who are paying taxes.

Mr. LARKIN. No, sir; and we certainly don't.

Mr. NELSEN. Would the gentleman yield?

Mr. YOUNGER. Yes.

Mr. NELSEN. As I understand it, I don't believe you would be required to bring this new package size in for approval, but if you went ahead with it and put it on the market, hazarding the chance that it would be approved, you might have spent millions of dollars to develop it and at that point be stopped in your tracks.

I think that that could happen. As I understand the bill, it doesn't say you must go to the Government agency and ask, "Can I have a package of this size?" But it does put you in the position of gambling pretty heavily before you put it on the market and then you might be stopped, as I understand it.

Mr. MACDONALD. Would the gentleman yield?

Mr. YOUNGER. I will yield.

Mr. MACDONALD. Obviously, it seems to me that there is nothing in that package that is at all a secret. I mean, the coffee is there, and apparently you say how much coffee is there. I will repeat, for the sake of the record, that we are some 10 or 12 feet apart so I can't see the whole thing. But it seems clear to me that there is no deceit intended at all in such a package.

People know they are getting a carafe, though I call it a coffee pot, plus the coffee. Where possible would there be an intent to deceive the public? Therefore, if there is no intent to deceive the public, as I have said to many witnesses before, and I will say to you so you can answer it if you want to, the whole point of the thing is that it says prevent the distribution of that commodity for retail sales, which is your coffee, in packages of sizes, shapes or dimensional proportions which are likely to deceive retail purchasers.

That doesn't seem to me like it is going to deceive anybody. What makes your company or yourself, experts in this field, feel that the people downtown, whatever agency gets this, will be so unreasonable as to say that you can't do that after you have invested a number of dollars in turning over the size of your packaging unit?

Mr. LARKIN. May I attempt to answer?

Mr. MACDONALD. Yes.

Mr. LARKIN. Let me refer you to page 2 of your bill, line 8, where it says it shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity for distribution in commerce or for any person engaged in the distribution in commerce of any package or labeled consumer commodity, to distribute,



or to cause to be distributed in commerce, any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label which does not conform to the provisions of this act and the regulations promulgated under the authority of this act.

Then, let me refer you to page 5, which is section (c) under 5, which says, "Whenever the promulgated authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers," and let me underline the next few words," *or to facilitate price comparisons as to any consumer commodity*, such authority shall promulgate with respect to that commodity regulations effective to establish and define standards for characterizing the size of a package"—and this is a different size than our regular coffee—"enclosing any consumer commodity which may be used to supplement the label statement net quantity" and so on.

Mr. MACDONALD. Don't use "and so on." It goes on to say "This paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions or number of packages which may be used to enclose any product or commodity."

You just can't skip that language. It is there.

Mr. LARKIN. Let me say again that they have the right in the paragraph that I just read, "Such authority shall promulgate with respect to that commodity, regulations effective to establish and define standards for characterizing the size of a package enclosing any consumer commodity which may be used to supplement the label statement of net quantity of contents of packages containing such product."

Then, "But this paragraph shall not be construed as authorizing any limitation in the size, weight, dimensions or number of packages which may be used to enclose any product" which to me means shipping container.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from New York, Mr. Murphy.

Mr. MURPHY. I will yield my time to the gentleman from Massachusetts.

Mr. MACDONALD. I yield to Mr. Younger.

Mr. YOUNGER. Thank you very much, for this triple play. We can use it.

I think there are practices going on in the Government that would lead one to doubt the administration of this. We have it right now with Dr. Goddard and his new order on vitamins.

Mr. LARKIN. Yes, sir.

Mr. YOUNGER. That is going to put many established institutions, which have been manufacturing for years, out of business, completely out of business, wiped out, if those rules and regulations that Dr. Goddard has promulgated stand. I don't think there is any question about it.

Mr. LARKIN. And also to force reformulation and repackaging of many, many food products.

Mr. YOUNGER. That is right. So I think that any manufacturer in the face of that situation can have grave doubts as to the administration and what might happen under this bill.

Mr. LARKIN. And we do, Mr. Younger.

Mr. SPRINGER. Would you yield for a question?

Mr. MACDONALD. I yield.

Mr. SPRINGER. I might have missed this point, but I don't find any point about cost in your statement.

Mr. LARKIN. Your question is very appropriate because I do not have in this brief testimony items of cost. But I am prepared to give you our point of view on cost of packaging were they standardized.

This group is familiar with the National Biscuit Co. exhibit of 2 or 3 weeks ago. I will be very brief to identify what would happen to us under a similar set of circumstances in our cereal business. We currently package 17 cereal products in 36 packages in 11 package shells. As an illustration, this is the standard shell in which we package five different products in different weights. This is the least dense, Alpha Bits, of the five packages that we sell in this particular shell.

So we put 8 ounces in this, Alpha Bits. That is represented by this visible container.

The next one is the same size container, but because it is a more dense product, we put 9 ounces of Sugar Crisp into this package.

We put 11 ounces of Bran Flakes, because it is a more dense package, into this same package.

And we put 14 ounces of Raisin Bran into the same package shell because it is, again, a more dense product.

If we were standardized, and I am assuming 4, 8, and 16 ounces standardized as to the net content, we would have to increase our packaging by the amount of 17 additional packaging lines.

Mr. SPRINGER. How many have you now?

Mr. LARKIN. We now have 11 or more.

Mr. SPRINGER. And you would have to increase that 17 or 17 more on top?

Mr. LARKIN. Seventeen additionally on top of it.

Mr. SPRINGER. That would make it 28, or more.

Mr. LARKIN. We have calculated that this would cost us \$11 million in capital, that the additional packaging materials, the additional labor expense, the additional depreciation on equipment and buildings, and the additional maintenance cost would cost us an additional \$2.7 million a year in operating costs.

Mr. SPRINGER. That is permanent.

Mr. LARKIN. That is permanent every year. Then as we calculate this over our total volume of cereal packages sold, it is our calculation that we would need to raise our cereal prices to the consumer after the retailer takes his normal markup that he is taking today by 7 percent.

Allow me to continue. General Foods in total packages 102 products in 335 different packages, so the 36 packages that we have in our cereal line amounts to 10 percent, roughly, of the total packages in General Foods.

If we extend that and say this is 10 percent of the problem, then we say we are faced with \$111 million worth of capital expense and \$27 million worth of operating expense, and a 7-percent increase across our line.

I suggest that this may be too severe, but I do feel that about a 5-percent increase in cost to the consumer is a realistic figure. I am

convinced, as I am sitting here today, that it will cost the consumer more, not less.

Mr. SPRINGER. You are talking about 5 percent. Let us see if we can get something on the record that this committee can understand. How much does that first package cost?

Mr. LARKIN. I don't have the package cost with me, but cereals run from 29 to 49 cents.

Mr. SPRINGER. Is that one about 30 or 35?

Mr. LARKIN. Here is one that is price marked at 33 cents.

Mr. SPRINGER. And 5 percent would be how much?

Mr. LARKIN. It would be a penny and a half per package.

Mr. SPRINGER. On top of that.

Mr. LARKIN. Yes.

Mr. SPRINGER. That, I take it, would be rather immediate when you went into this. Is that correct?

Mr. LARKIN. Yes. This is far too big a bill for us to absorb. As Mr. Roll said this morning, we are battling higher commodity costs today.

Mr. SPRINGER. Let us take the first year. In the first year, you said that would be how many millions?

Mr. LARKIN. In the first year, as soon as we get the additional packaging lines, we have spent \$11 million. That is capital.

Mr. SPRINGER. How much then would you increase the cost each year?

Mr. LARKIN. It is going to increase in annual operating costs \$2.7 million for cereals alone.

Mr. SPRINGER. What about the rest of your packaging?

Mr. LARKIN. We have not gone through this exercise. I am using this as an example, but this is about 10 percent of the total packages of General Foods. You can multiply that broadly.

Mr. SPRINGER. Is it too much for you to go through this thing and have your auditor do it and send it into the committee?

Mr. LARKIN. We would be very happy to attempt it.

Mr. SPRINGER. Mr. Chairman, I would like to ask unanimous consent to put this into the record at this point in the permanent record.

The CHAIRMAN. Without objection, that will be done.

Mr. SPRINGER. Could I have this, which you are talking about today, sent to my office?

Mr. LARKIN. I would be very happy to.

Mr. SPRINGER. I don't want to wait for the reporter to send it to me. I would like to have it myself, if I may.

Mr. LARKIN. You certainly may.

The CHAIRMAN. The gentleman's time has expired.

I would like to make one observation. You mentioned 4, 8, and 12, did you not?

Mr. LARKIN. I mentioned 4, 8, and 16.

The CHAIRMAN. Do you think that is set forth any place in the bill?

Mr. LARKIN. No, sir, I do not.

The CHAIRMAN. Don't you think that is kind of like the safety bill when they said we would require the automobile industry to make Sherman tanks and it would cost everybody in this land too much to have automobile safety?

Mr. LARKIN. I am not familiar with that legislation.

The CHAIRMAN. You are using figures and weights that are not realistic. The people downtown are not going to require anything like this.

Mr. LARKIN. May I suggest that if the bill is not going to be implemented, we don't need the bill. I think we must assume that the bill is going to be implemented.

The CHAIRMAN. We hope so. That is what the committee is here for, in its wisdom to make changes and do what it thinks is right. The committee will not let this bill go out and put you to millions of dollars of costs. I don't think the assumptions which you have made are apropos to the bill at all. I don't think they apply.

Mr. SPRINGER. Mr. Chairman, I would like to make the observation that you were not here for part of this morning. The Kellogg people testified this morning. I don't know why we have never asked this question before, but we asked if any other country has this. They compared South Africa, where you have 4, 8, 12, 16, and 24. This is the container. They do not have such a law in Mexico. They compared the cost.

The only thing I can think Mr. Larkin would do is that this thing would come from countries that have already had this experience. The experience of the Kellogg Company was that even though the plant in South Africa was the same as the plant in Mexico, the cost of the plant in South Africa was 51 percent more, and almost all of that was due to labor, which they had to add to this in order to meet the requirements of the Government of South Africa in the fair packaging field.

I think this is something that is really coming home. We are getting a picture of what this is going to cost.

Mr. MACDONALD. Would the gentleman yield?

Mr. SPRINGER. Yes.

Mr. MACDONALD. Don't you think it is unrealistic to compare South Africa and Mexico with the United States? There are many things that the South African Government demands of its citizens that we don't demand. I don't think it is any comparison at all that isn't far fetched at least to think that the U.S. Government is going to make the same demands as the South African Government.

I don't see why that is relevant at all, though I listened to the same testimony.

Mr. SPRINGER. May I have a moment to reply? This is the only experience that I know of that anyone has had. I think the gentleman had to assume that packaging would come in 4, 8, and 12, because the only country that has ever used it has come up with this kind of a formula.

I think that is the reason that these gentlemen have used it, since they had nothing else to rely upon, except from the countries that have had experience with this.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Mr. Larkin, has your company been involved at any time in its history in the process of developing a voluntary product standard?

Mr. LARKIN. Yes. We are involved now, Mr. Gilligan, and it has to do with the cents-off labels and voluntary standards. Is that what you are alluding to?

Mr. GILLIGAN. Yes.

Mr. LARKIN. I would like, if I may, to give a bit of background. Cents-off labels have proven over the years to be effective ways of getting temporary price reductions through to the housewife through the retail channel.

It is a fact of life that retailers and manufacturers of advertised brands have very honest and very real conflicts of interest in many major categories. Coffee is one of them; desserts is another; frozen foods is another.

Many times it is to the retailer's interest not to pass through some kinds of promotional efforts. Cents-off label, because it is on the label, gets passed through.

We also have felt in our company that overuse of cents-off labels has led to abuse in the past. Twice we have attempted to lead our coffee industry out of the overuse, if you will, of cents-off labels by unilaterally going out of them.

For good, sound, competitive reasons our competitors did not follow us and we went back into it. Then on January 14—and Mr. Dixon had some things to say about this during his testimony, which I heard—on January 14, we did receive a letter from the Federal Trade Commission, along with 21 other coffee roasters.

There are, incidentally, some 450 total coffee roasters in this country. The FTC requested a 6-month moratorium on cents-off label packs of regular and soluble coffee. They asked us to suggest guidelines which might help them in formulating guidelines for the industry.

They suggested that an informal conference would be held in the near future with members of the industry to help formulate some of these guidelines. We replied promptly.

We forwarded all the information that they required. They scheduled hearings for April 27. We sent in our written testimony. We answered all their questions.

Then we sent them our proposed guidelines on the use of cents-off labels. They held their hearing. Then we heard nothing from the Federal Trade Commission.

Our brands, because we did go out of cents-off labels, and the other brands went out—some of them had longer inventories that we did, it took them longer to get off the shelf and get into a list price situation—and there were also 420-odd coffee roasters and processors that were not required by any agreement to get out of cents-off labels who stayed in it. We went down to the Federal Trade Commission, sent our general counsel down, armed with information telling the Federal Trade Commission that we were hurting competitively volumewise, and profitwise, and we urged the Federal Trade Commission to hold this informal conference and get on with the guidelines.

August 1 came along, which was the end of the moratorium and we urged them again to get on with the guidelines. For their own good and sufficient reasons, but regretfully to us, we have not yet heard from them. It is a frustrating experience.

Mr. GILLIGAN. My question is have you any way of anticipating how long it would take to reach a voluntary standard in the coffee roasting business on this packaging label?

Mr. LARKIN. If this experience is any criterion at all, it will take far in excess of 6 months. We are now in the seventh month without even having our first conference.

Mr. GILLIGAN. In this procedure in which you are presently involved do you have participation on the part of manufacturers, distributors, and consumers, or is this just a unilateral transaction at the present time between yourself, several other companies, and the FTC?

Mr. LARKIN. This is not quite unilateral. It is 22 industry members.

Mr. GILLIGAN. Each making a separate presentation?

Mr. LARKIN. That is what has happened so far, Mr. Gilligan. But the informal conference, as we understood it, was to be among the 22 coffee manufacturers.

Mr. GILLIGAN. And this is directed to eliminate or modify in some ways the cents-off promotional technique?

Mr. LARKIN. Not to eliminate, but to provide guidelines.

Mr. GILLIGAN. Does it have anything to do with standardizing the weights or sizes of packages that coffee shall be sold in?

Mr. LARKIN. Not at all.

Mr. GILLIGAN. Can you tell me quickly how many consumer commodities your company, General Foods, produces in the meaning of the term as used on page 7, section (5) (d)? They use the term there "consumer commodity."

Mr. LARKIN. What is a consumer category or commodity? It is terribly difficult for us to determine what is a commodity. We deal in many, many different commodities, depending upon the definition.

Mr. GILLIGAN. Did you say before you had 102 products?

Mr. LARKIN. We have 102 products. Three of them might be three different brands of soluble coffee which I assume would be a category. But then freeze-dried coffee would be maybe another category.

Mr. GILLIGAN. Thank you.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

Do you have any basis for that figure, if this bill passes in its present form, of 5 percent extra cost to the consumer? Do you have any yardstick by which you measured that?

Mr. LARKIN. Yes. From the example I gave you on costs, using the hypothesis that cereals would be standardized into 4-, 8-, and 16-ounce packages.

Mr. MACDONALD. We can imagine the same thing, but why do you take that hypothesis? There is nothing in this bill that says that will happen.

Mr. LARKIN. It is a possibility that it can happen.

Mr. MACDONALD. If you stay in Washington, and you have been here, I know, quite a long time waiting to testify, anything is possible in Washington. But it isn't very likely.

Mr. LARKIN. If it isn't very likely, then I would suggest the legislation is unnecessary, if it is not going to be used.

Mr. MACDONALD. We are now making legislative intent clear in marking up this bill. I don't think that any member of this com-

mittee wants to do either one of two things: Either hamstring the manufacturers, or increase cost to the consumer.

That, obviously, would be the last thing that this bill should do. I frankly think you are looking for bogeymen under the rug who are not there. When you just blithely say it is going to increase the cost to the consumer 5 percent, that sounds like a good, round figure, but what do you base it on?

You base it on standardization which you say is in the bill, and I ask you if you think it is in the bill to tell me where it is in the bill.

Mr. LARKIN. I will tell you again. Let us please go back to page 6, and the bottom of page 5.

Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by Section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons, such authority shall promulgate with respect to that commodity regulations effective to establish and define standards.

Mr. MACDONALD. And then you go to page 7, line 11, and you read the following language which certainly would make a reputable company like your's happy, I would think:

Prevent the distribution of that commodity from retail sales in packages of sizes, shapes or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof in terms of weight, measure or count.

I know you don't go about, your company, trying to deceive the consumer. Therefore, you would not be affected by this legislation.

Mr. LARKIN. Yes, we would, because on page 6, line 3, that controls, that section (c) controls, subsection (5). It says not only to deceive but to facilitate price comparison. We believe that the consumer looks at many more things, values, than price comparison.

Mr. MACDONALD. Obviously. That is why brand names are brand names. That is why Maxwell House spends so much money advertising itself. It is a brand name. A housewife going into the store knows it is an old-established company that through the years has produced a good product.

Mr. LARKIN. But if someone should say that this carafe or that hexagonal package did not allow the housewife to facilitate price comparison—

Mr. MACDONALD. If you put the poundage of the coffee on there, if you put what is in the package in a clear place, why do you think that the people downtown are going to do such an extraordinary thing as to say, "No, you can't have that kind of package." It specifically says in the bill that you can have any kind of package you want if you label it clearly.

Mr. LARKIN. It says if a Government agency decides in their wisdom that this does not facilitate an easy price comparison for the housewife, they can standardize the package.

Mr. MACDONALD. But it doesn't say that exactly. This is what your fear is. What you are testifying here is not about the bill but about something that you fear might happen. Actually, you cannot buttress it by any words in this bill that it is going to happen if the bill should become law.

Mr. LARKIN. I made it as clear as I can.

Mr. MACDONALD. I have tried to make it as clear as I can, as a member of this committee, who has to mark up this bill. As you understand, this isn't the final bill. We will go through many phases of just going line for line, word for word, as to what should be contained in the bill.

I just want to assure you that there is no member of this committee that I know of, and I know I make assurance for myself, who want to injure you. The whole point of the bill is not to injure the legitimate operators, but to protect the consumer. You are a legitimate operator and, therefore, I don't see what you have objection to.

It is the small, fly-by-night person when he says 4 cents off or 9 cents off that the consumer, who has never seen the product before, thinks is a bargain.

They do know what Maxwell House usually sells for, so they do know what a cents-off thing is there. They know what it is a cents-off of, more or less, the shrewd buyer.

But the small fly-by-night person who is cutting corners, this bill is a protection of the reputable operator from him, and it keeps amazing me that the reputable operators are opposing it.

The CHAIRMAN. What he is trying to say is that we want constructive criticism. If you come here and say, "This would help this bill," or, "This would help this land of ours" instead of just coming in here and saying, "Everything is wrong," it would be helpful.

Mr. LARKIN. I hope I didn't leave that impression, Mr. Chairman.

The CHAIRMAN. I know you didn't. You do say that there are some good things. What we want is constructive criticism that will help us.

Mr. LARKIN. May I continue on that vein for a moment?

The CHAIRMAN. Yes; you may.

Mr. LARKIN. I think we have covered servings. Our suggestion is if you want servings, rather than attempting to define servings, the subsection should require that if a manufacturer includes a serving statement on a label, he shall also specify the size of the serving in terms of weight, measure, or count.

For example, makes four servings, one-half cup each, or six servings, 3 ounces each.

May I go on to subsection (c) (3), which has to do with cents-off labels?

The CHAIRMAN. I might ask you this one question first. Do you not in your example of cents-off sales indicate the need for this legislation? I thought you did a while ago. If I understood you correctly, you stated that voluntary action will not achieve the needed results, therefore, you need this bill, don't you?

Mr. LARKIN. Mr. Staggars, what I was attempting to say is that in the area of overuse or abuse, the Federal Trade Commission has plenty of authority to go even on an industrywide basis, which they did in the coffee industry, to regulate overuse or abuse.

We are attempting to work with them. There seems to be a second problem that is bothering the committee on cents-off labels, and that is cents-off what.

The CHAIRMAN. That is right.

Mr. LARKIN. You recognize, and we surely recognize, that we do not control the price at retail. If this part of this argument is bothering



the committee, although I feel that 99 percent of off-labels are passed on, it seems to me that the industry could live with a requirement that says the manufacturer takes the cents-off amount off his invoice, and that you require the retailer to pass on at least the exact amount of the off-label, which would satisfy that, and not then destroy or regulate unduly an effective marketing device that is benefiting the housewife, and allows a bargain to get through to the consumer.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I would like to pursue the cents-off statement that you made.

I gather from what you have said that actually the cents-off plan of merchandizing could be handled by authority that the Federal Trade Commission now has. Is that correct?

Mr. LARKIN. I believe it can be; yes.

Mr. NELSEN. The thing that disturbs me about this bill is that the cents-off technique was one of the selling points by the administration spokesmen, that this had to be curbed, and, therefore, we needed this new piece of legislation.

I would not agree with the chairman that some of these arguments are ridiculous because if I were in the food packaging business I would assume that the administration's sales pitch is the basis on which the bill would be administered, if it were passed.

The testimony by Mrs. Peterson, and I have it before me, says, "The fewer sizes and the fewer off-cents sales deals they have to content with, the simpler their stock records and the lesser stock shelf they would need."

She is making the pitch that the cents-off deal should be out of the picture.

Also, in the testimony are references continually by Mrs. Peterson about standardization of packages. While I would agree with the chairman that they are not going to write the bill downtown, I would also point out that if I were in the food business, I would be fearful of the fact that the administration of the bill would be in keeping with the executive department and not the legislative.

Therefore, it is important that in the hearing we develop a record which indicates what we in the Congress want to do and to protect the type of technique which we wish to pursue.

I yield to the gentleman.

Mr. MACDONALD. I appreciate your yielding.

I want to keep the record clear. Mrs. Peterson, to my knowledge, and I attended all the hearings in which she testified, just once used the word "standardization," and then took it back, saying that although she used that word she didn't mean it, and that it was not the intent of the Panel that there be standardization.

So, she didn't, Mr. Nelsen, use it continuously. She used it one time and within minutes said that she regretted the fact that she had used it.

Mr. NELSEN. I would disagree because on page 76, and I have gone through the record pretty carefully, she made the statement, "There was a heavy degree of proliferation, and certain ground rules and standardization will help." Then in the next reference, "There is no desire for standardization that was unreasonable."

The next reference I have is, "I think it is because there are no ground rules, that there has been such a proliferation, and it is impossible for the consumer to make this valid price comparison."

The next reference I would like to refer to, "Again, the standardization would be in the area so the consumer could know what amounts where."

But I realize with Mrs. Peterson it is a matter of choice of words that I think we sometimes hear in our own comment on a bill. I would assume from this that standardization is in the wind and I think it is up to us in the legislative body to make it very clear what we wish to do. I think the chairman has so stated.

Mr. GILLIGAN. Will the gentleman yield?

Mr. NELSEN. Yes.

Mr. GILLIGAN. On the question of Mrs. Peterson's prepared testimony, not her answers to questions, she said on page 4, in describing the conditions under which commodity by commodity regulations can be issued are clearly spelled out, and—

Industry is invited to determine its own voluntary standards, to reduce the confusing array of weights and sizes.

So it seems to me if you are reducing the array, you have to be coming down to some specific number.

Then she used an example of the 33 young married women who were sent into the grocery store and who made a lot of mistakes. She said:

They made no mistakes on staples like sugar and flour which are sold in whole unit packages. They had the greatest difficulty with products where there was a proliferation of sizes and mixed units of measure—

which she apparently finds reprehensible.

Then on the voluntary aspects of section 5(d)(2), she says:

Provides for a regulation of weights or quantities at which a commodity may be sold if the ability of consumers to make price comparison is likely to be impaired. This would be accomplished by encouraging the industry, itself, to agree upon the most wanted sizes and to establish voluntary product standards under procedures already established.

A little later, on the same page, she says:

If this were not accomplished within a year or a year and a half at the discretion of the administering agency, the administering agency, itself, might promulgate such a standard.

It seems perfectly clear to me that the whole intent here is to reduce the proliferation of sizes, and if that isn't accomplished by standardization which, as she said, will be done voluntarily by the industry or if not by the industry will be done by the promulgating authority within 18 months, then I don't know what this legislation is all about.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. I will be pleased to yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman.

I want to commend the witness for a very fine and helpful statement. It occurs to me that he has been perhaps the most constructive witness we have had from industry on this legislation.

I had hoped to ask a question or two about your experiences and judgments with regard to the problems of cents-off, but you have cov-

ered that very well. I would like now to switch and perhaps ask you with regard to some other points.

You spoke, first of all, about instant coffee and regular coffee. First of all, you sell regular coffee in 1-pound and 2-pound cans, I believe.

Mr. LARKIN. And 3-pound cans. Some people sell them in half-pound cans.

Mr. DINGELL. Are there other sizes in which coffee is sold, like 17 ounces, 14 ounces, 23 ounces?

Mr. LARKIN. There are not at present, if you restrict yourself to regular coffee.

Mr. MOSS. If the gentleman will yield, I believe there is one distributor on the Pacific coast who sells in a quarter-pound can.

Mr. LARKIN. Yes, quarters, halves, pounds, 2, 3.

Mr. DINGELL. But no 23½ ounce cans?

Mr. LARKIN. Not that I am aware of, no, and I think I would be aware of it.

Mr. DINGELL. Similarly, sugar is sold in similar size cans, 1-pound, 5-pound, 10-pound, and so on?

Mr. LARKIN. Yes.

Mr. DINGELL. And it would be the same with regard to flour? That is, 1, 5, 10? You wouldn't have 17¾-ounce sacks of flour.

Mr. LARKIN. I am not aware of any. But I am not aware of even multiples either.

Mr. DINGELL. It is fairly easy for a consumer to make a price per ounce comparison between different coffees; am I correct?

Mr. LARKIN. Yes.

Mr. DINGELL. But there he is dealing, let us say, with substances which are not exactly identical but are fairly similar. Am I correct?

Mr. LARKIN. If you are comparing regular coffee with regular coffee; yes.

Mr. DINGELL. I am not asking you to prejudice your corporate interest here by telling us that anybody else makes coffee as good as yours. But I am saying they generally would be substantially similar as between different 1-pound cans of coffee or bags of coffee, that the consumer could determine the unit differential within his own mind without using a slide rule or a complicated logarithmic table, something of this kind.

Should a consumer be entitled to do the same thing with regard to instant coffee? In other words, make a per ounce judgment insofar as instant coffee is concerned?

Mr. LARKIN. We have no argument, Mr. Dingell, in staying with even ounces on soluble coffee. Our only problem with fractional ounces is when the ounce weight is not the major criterion for the housewife wanting to buy the product.

Mr. DINGELL. Where would that particular condition arise?

Mr. LARKIN. Let me illustrate that in a whole line of Jell-O puddings of different densities; for instance, we have weights per package running from 1¾ to 2¾, 2½, 3 ounces, and so on, but they all make the same number of servings.

Mr. DINGELL. I would like to defer on this a bit, if I could, because I had intended to work toward this end. But I wanted to discuss first, if I could, the problem that we run into with regard to substances which are substantially identical or very similar.

For example, green beans, peas, frozen or in the can, carrots, sugar, flour, coffee, instant coffee, commodities of this kind, perhaps canned strawberries or frozen raspberries, or items of this kind. Would we run into a problem if we were to generally deal with standardization of those particular size packages, so that a consumer could make an intelligent judgment between, let us say, two packages of frozen peas, or two packages of frozen strawberries, something of this kind?

Mr. LARKIN. My problem with that question is this: If you standardize products that are on the marketplace today, there is, just as sure as we are sitting here, going to come innovation in whatever field you talk about that will put this product in some different form or shape, or there will be some different product formulation that will change the net weight content, package size, or dimension.

If the manufacturer is restricted to any given size, shape, or multiple, then it restricts the innovative opportunity. It deters it. It makes it more trouble, more difficult, to reformulate to the consumer's benefit because we can't go up a quarter of an ounce or down a quarter of an ounce, as it may be determined by a reformulation.

Mr. DINGELL. Mr. Chairman, I do have another question that I would like to ask, but I will defer, if you wish.

The CHAIRMAN. Mr. Keith's time has expired, but you may proceed on your own time.

Mr. DINGELL. Thank you, Mr. Chairman.

I think you and I are working together on the point that I want to come to. We have talked about different substances which might be, generally, more or less the same. It is fair to say that some innovation in packaging in the food industry is of benefit to the consumer.

It is also fair to say, I believe, that a certain measure of this innovation is done for convenience or for the salability of the merchandise concerned; am I correct, sir?

Mr. LARKIN. Yes; and if it doesn't sell and if she doesn't like it, it isn't there long.

Mr. DINGELL. This is it. So we have the two. On the one hand we have the salability for the consumer, because of consumer preference for some innovation, and on the other hand you have something which might be, let us say, for the benefit of the merchandiser, the person who manufactures.

Mr. LARKIN. That second, to me, is a fairly shortsighted point of view, because if it doesn't serve the consumer, regardless of how it serves the merchandiser or manufacturer, it won't be there.

Mr. DINGELL. I must confess a certain measure of concern over some of the practices I have seen in the industry which would not be, at least from a cursory view, directed solely to the consumer's benefit.

I think we can cite some examples, but I think I prefer to stay away from them.

What I am coming to now is the very important question I want to ask you. Can any line be drawn between products such as coffee which could fairly well be standardized insofar as 1-pound cans or 2-pound cans, something of this kind, and some item like a cake mix or a pudding mix, something of this kind, which obviously would be rather difficult to standardize? I am asking your help to guide the committee.

Mr. LARKIN. My fear, again, is innovation. Let me give you an example. Instant coffee today is sold in 2-ounce, 6-ounce, 10-ounce, 14-ounce sizes.

Mr. DINGELL. If I may interrupt you at that point, is this always the case, or is it  $2\frac{3}{4}$ ,  $2\frac{6}{10}$ ?

Mr. LARKIN. I am not aware of any fractional ounces in soluble coffee.

Mr. DINGELL. In other words, would you say that all makers would go 2, 6, 12, whatever it might be?

Mr. LARKIN. I would say the majority of soluble coffee is sold in those sizes. There are some 8-ounce sizes. But to get to my point, a new freeze-dried coffee will give the same number of cups in a smaller package that weighs less ounces because it is a more dense product. It is an innovation. So you don't take a rounded teaspoon or else your coffee is too strong. If you put that in the standardized 2-, 6-, or 10-ounce sizes, if she used the rounded teaspoon, she would get too strong coffee.

If freeze-dried coffee were sold in 6- and 10-ounce sizes it would be priced out of sight.

So we have put freeze-dried coffee into a 4-ounce size, which gives roughly the same number of cups of coffee because the consumer uses less.

Mr. DINGELL. To return to my question, is there a line that can be drawn between regular coffee and other products which are more or less the thing you spoke of, freeze dried as opposed to your more or less standard type of soluble coffee?

Mr. LARKIN. As of any knowledge I have today, I am not aware of any innovation in regular coffee that would change the density of the produce, if you will. But believe me, that is not to say it will not happen to us tomorrow, because we are working on it every day.

Mr. DINGELL. Let me ask you this: Let us take the case of salad oil. This started out in pints and quarts. Now we have gone to 24 and 28 ounces.

I think it would be fair to say this: This particular innovation is not necessarily entirely to the consumer's benefit, because a 14- or 28-ounce as opposed to 16- or 32-ounce is fairly similar in size.

If you give a little different body shape to the container, you will come up with something which looks to be substantially the same, but which costs significantly more per unit, per ounce. Would you say there was any innovation here that should be protected for the consumer's benefit?

Mr. LARKIN. Let me give you an example from my own experience in this sizing business which might be helpful. We had soluble coffee in the 2- and 6-ounce size and we found that in a buying cycle people were buying the coffee more often and running out, so we came up with a larger size. We said "large, economy size" on it.

Mr. DINGELL. My chairman has his gavel in hand.

I would rather not talk about that but stick with this other. Why should we tolerate the 14 ounce as opposed to 16 ounce in salad oil?

Let us take peanut oil, corn oil, safflower oil, two safflower oils are generally similar. Generally their functions are pretty much the same. The same thing would be true with regard to olive or peanut oil.

Why should the person be forced to choose between a rather slickly done 14 ounce as opposed to a rather stodgy 16 ounce when he will be paying more and he might be deceived into buying that 14 at a higher unit cost as opposed to a cheaper and better deal for himself if he would not be confused into buying that 14 instead of the 16-ounce container?

Mr. LARKIN. May I ask Miss Dunham to answer that question?

Mr. DINGELL. Certainly.

Miss DUNHAM. My experience in watching women shoppers is that they read the label, and if it is clearly marked on the label, 14 ounces or 16, then she buys on the basis of that 14 or 16 and it is priced to that.

Mr. DINGELL. Let us talk about the gal who sends her husband to the store.

Miss DUNHAM. Then she should teach him to read the label.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. I presume it is true that anyone who goes into buy will have to read the label or they will not know what is in any container.

Mr. LARKIN. Yes, sir, that is right.

Mr. ROGERS of Florida. Thank you very much.

The CHAIRMAN. Are there any more questions?

Mr. MOSS. I have just one question.

I must confess since I realized the inevitability of having to sit here and finally make a judgment on a legislative document that I have become much more interested as a shopper. I have been doing quite a bit of it lately. I have roamed the aisles of a number of supermarkets. I have the affliction that hits many of us in our fifties. My arms have become too short and I have difficulty reading.

I noted that in many instances labels are done in complementing rather than contrasting colors. They are metallic finished labels. I have great difficulty on many products in determining what the labels are.

If I think to take along a special pair of glasses that I carry and take off my regular ones and put those on, then I haven't quite the difficulty. But it seems to me that there has been an increased tendency in some commodities to utilize these metallic labels where it is very difficult to read the very small print that gives these fractional sizes.

I must also confess that I have had great difficulty in determining what the best buy might be in dealing in many of the large chain markets where there are both standard and private brands, and you attempt to formulate a judgment.

What would be your observation on that?

Mr. LARKIN. Mr. MOSS, we subscribe to the model laws on labeling and net contents, and where it should be in the principal panel, and what type size it should be.

We do it because we believe in it and our consumers play back to us that they like to be able to read this loud and clear.

If in your minds this needs further clarification than is available now, it seems to me the food industry can certainly live with it. If

you need to specify even larger type sizes than are now specified in these model laws, we have no great argument with that.

Mr. Moss. I am troubled. I believe there is a clear consensus in this committee that we are not anxious here to take any action that would be prejudicial to the very important distributive business of food commodities consumed in the average home everyday.

On the other hand, we are mindful of the fact that that is a market that is increasingly competitive, and that all innovations are not necessarily good or just innovations. I have some pet peeves. One is an attempt to buy bacon. I like it lean and I have great difficulty in finding whether it is lean or whether it is fat. It is so attractively packaged that it defies my greatest ability at attempting to see what it is.

There are other items packaged like that.

Mr. YOUNGER. Will the gentleman yield?

Mr. Moss. Yes.

Mr. YOUNGER. Do you think we ought to include meats in this bill?

Mr. Moss. I just said I had a pet gripe.

Mr. YOUNGER. I want to satisfy your pet gripe. Should we include meats?

Mr. Moss. You can't tell. In markup I may offer such an amendment.

I thank the Chair.

The CHAIRMAN. We want to thank you, Mr. Larkin, and Miss Dunham, for coming to give us the benefit of your views. You have been very helpful witnesses and I am sure you have added to the record.

I am sure that you, like the members of this committee, are trying to do what is best for the overall problem in the land.

Mr. LARKIN. We certainly do recognize that, Mr. Chairman.

The CHAIRMAN. As I say, we do appreciate that you have come to give us the benefit of your views. We hope the other witnesses will take the same attitude that you have, that we are trying to work out something together, and we are not working at cross purposes.

Mr. Moss stated it very well, that the members of the committee are not out to hurt any industry in this land. That would be bad, it would not be the American way.

But we are obligated to carry out our responsibility to the consuming public, to work on this bill and to cut out some things or to amend others.

That is the reason we need the help. If you people who are eminent-ly qualified to give us that advise will help us, we appreciate it.

Mr. LARKIN. We will do our best now and in the future, Mr. Chairman. We urge you in all sincerity to take a real hard look at section 5.

The CHAIRMAN. Thank you so much, both of you.

(The following letter was subsequently submitted by Mr. Larkin:)

GENERAL FOODS CORP.,  
White Plains, N.Y., August 26, 1966.

HON. HARLEY O. STAGGERS,  
Representative in Congress,  
Rayburn House Office Building,  
Washington, D.C.

DEAR MR. STAGGERS: I want you to know how much I appreciate the gracious treatment afforded me by you and the members of your Committee on the occasion of my testimony before you earlier this week. I am hopeful that my

appearance will prove of some help in your thoughtful consideration of the Packaging Bill. If I can be of further assistance to you in any way I will consider it a privilege.

I noted with interest in the press that you asked some industry witnesses, prior to my appearance, whether their opposition to the bill would recede if the section on size and weight standards was replaced with a provision prohibiting slack filling and the use of packages which look similar to established packages, but contain less. Had you asked me that question I would have answered you in the affirmative, and had I known that you had asked the question of prior witnesses I would have volunteered an affirmative comment.

Experiences with your Committee, culminating with my appearance before you, is a source of great reassurance to me that this proposed legislation is being given careful, intelligent consideration and that you and your associates will be as sure as you possibly can that whatever legislation is reported out will be constructive, fair and truly in the public interest.

Sincerely,

A. E. LARKIN, JR.,  
*Executive Vice President.*

The CHAIRMAN. At this time we will hear from Mr. Thomas McCabe, Jr., of the Scott Paper Co.

**STATEMENT OF THOMAS B. McCABE, JR., VICE PRESIDENT, SCOTT PAPER CO., ACCOMPANIED BY MRS. CARTER BULLER, CUSTOMER RELATIONS DEPARTMENT, SCOTT PAPER CO.**

The CHAIRMAN. Would you identify your aid, Mr. McCabe?

Mr. McCABE. I will, indeed, sir. The lady on my right is Mrs. Carter Buller. She is in charge of our customer relations department. I think she may be of assistance during the questioning.

In the interest of time, Mr. Chairman, if you are agreeable, I would like to hurriedly present my testimony.

The CHAIRMAN. That will be fine.

Mr. McCABE. As a representative of the Scott Paper Co., I can tell you that the packaging bills under consideration by this committee will have a very direct impact on our business because of the nature of the products that we manufacture, and most particularly our line of consumers and potential consumers the product of his company, and he these products, which is through supermarkets and independent retail stores.

I would like, if I may, to make what I hope will be a few constructive comments with respect to the proposed legislation and the impact on our business.

We believe that a businessman assumes certain responsibilities when he take a product to market. Each day he places before the eyes of consumers and potential consumers the product of his company, and he says "You should buy this product because it offers in return for your dollars utility, quality, and value."

In fact, if the customer pays their money and does not receive satisfaction in terms of utility, quality, and value in the product or service she buys, in our experience they will not, in this country buy again.

As a representative of Scott, I can tell you that our company will produce domestic sales this year in the range of a half billion dollars. The largest portion of those sales is in paper products sold through supermarkets and independent retail stores for use in the home. Thus, Scott Paper Co., will receive the full impact of any legislation affecting



the packaging of consumer products, and certainly of H.R. 15440 or S. 985 if either becomes law.

Frankly, gentlemen, I was dismayed by the recent action of the Senate Commerce Committee and the Senate as a whole with respect to this bill, and I urge you to give this legislation the very serious attention it deserves. In your hands rests the fate of a vital and dynamic aspect of American business life because packaging is one of the most important marketing forces in self-service merchandising and, therefore, in the continuing stimulation of consumer demand in the largest purchasing segment of our economy.

Let me briefly review the specifics:

Passage of this bill will restrict rather than stimulate consumer demand. The objectives of this legislation run counter to national economic objectives.

The consumer for whom this so-called protection is sought will be hurt more than helped by it and will have to pay higher prices for the products she buys to obtain protection which she already enjoys under existing Federal and State laws.

From every indicator—market research, surveys, consumer mail—there is no significant “confusion or deception in the marketplace.” To make sure that what our own consumer mail was telling us was accurate, we participated, through the Grocery Manufacturers Association, in a national survey conducted by Opinion Research Corp. Here are some of the facts resulting from that survey.

Do consumers want Federal control of packaging? Ninety-nine percent of American housewives veto proposals to regulate package shapes and designs. Only 1 percent saw any value in restrictive legislation.

Do consumers want fewer sizes in food packages? Eighty-six percent of housewives are happy with today's package sizes.

Are consumers misled by information on food packages and labels? Eighty-six percent of housewives say that packages and labels give them all the information they need.

We can find no evidence of widespread consumer dissatisfaction with the packaging and labeling of products—certainly not of such force to warrant the crippling, costly, and unnecessary controls as proposed in this bill.

Scott Paper Co. has been concerned about this legislation in all of its previous forms and on three prior occasions our president, Mr. Harrison F. Dunning, has testified against it. H.R. 15440 and S. 985 represent some improvement over earlier versions of bills directed to the same end, but still raise the specter of interference with legitimate, fair, and reasonable marketing practices—particularly in the areas of package standardization and the limitations placed on cents-off promotions.

It appears to me, therefore, that this bill has made as much progress as it has in the Congress largely through the efforts of a small group whose articulate and rather emotional arguments hide the fact that they speak for very, very few people.

Application of the proposed standardization regulations will create greater confusion by forcing a proliferation of package sizes on the one hand and in other cases, a drastic cutback in the choice of quantities now available to the customer. Not all commodities have the same volume, density, weight per ounce, and value.

Hence, different sizes and amounts are necessary. If this legislation is passed, virtually all competitive products in the same category will look the same on the shelf and the advantages of unique package shape and design will be lost and confusion among grades would likely follow. And clearly, there just isn't in the marketplace the confusion and deception that the proponents of this bill would have you believe.

What is in the marketplace is competition and it extends to pricing, packaging, and, most basically, value. Each of these elements is part of the whole; they are critically interrelated and form the sum and substance of the total offering.

There are a number of examples of consumers saying to packagers: "This is not fair," or "This is misleading," or, yes, even "I think this is plain dishonesty." And the companies who have continued to grow and progress have made right what they once made wrong, no matter what very good or very bad reasons they had for their original decisions.

I am not saying that businessmen are more sincere than others in carrying out their jobs. But I am saying that their sincerity and honesty is equal to those of others and they try as hard to please their customers as legislators do to please their constituents.

A businessman assumes certain responsibilities when he takes a product to market. Each day he places before the eyes of customers and potential customers the product of his company and says: "You should buy this product because it offers, in return for your dollars, utility, quality, value." If he is false, if he does not keep faith with his customers, if, in fact, the customer pays her money and does not receive satisfaction in terms of utility, quality, and value in the product or service she buys, she will not, in this Nation, buy again.

Obviously, in companies like Scott, we receive complaints from consumers. It would not be possible, I think, to produce something like one million and a half packages of products a day and not receive some complaints. We go, I think, far out of our way to satisfy the small percentage of customers who feel that they have not received in some way the value they should be getting when they purchased our products.

Let me illustrate this briefly how at Scott the consumer dictates and influences packaging in our business. Customer criticism which we receive largely in the form of mail is fed back to the design and manufacturing process in our business through our company's consumer relations department.

Because of consumer suggestion or criticisms, we have in the past changed a number of packages, included good opening devices, instructions, cutter edges, and design and graphics, on some of our packages.

As an example, a number of people wrote in about our towel wrappers, when we switched to polyethylene. The small flower designs we used on our paper wrapper were used on the polywrap with the new material which was introduced.

Some customers were now led to believe that the towels inside were decorated. As soon as this confusion was brought to our attention, we immediately removed the flowers from the package.

In other instances, we have gone out of our way at additional cost to prevent consumer misunderstandings. We make two lengths of

wax papers, the 125 feet and the 75 feet. The rolls are the same width, only the length is different. We could put both of these products in the same sized box and point out the difference in copy. This would save us a considerable sum of money, but we don't because our policy dictates against this. We make two different-sized boxes with different equipment handling each.

The question may then arise in your mind as to "Why, Scott Paper Co., do you oppose legislation that its proponents say is to protect the consumer? If your packaging is designed to insure that consumers are not misled, then this bill will have no effect on you."

The truth is that the truth-in-packaging bill in our judgment is not necessary, and the result of such legislation would be to throw out perfectly good machinery and equipment and buy replacements, because present equipment is designed to prepare and package products in a given way.

To use an example, should the Federal Trade Commission, having thoroughly review the situation, conclude that paper towels should be packaged in multiples, of, say, 75, Scott Paper for one, will have to buy equipment that counts towels in 75 because its existing equipment will not count in these multiples.

Now, we have prepared a study of the impact of standards on the packaging of our towels and we have made some assumptions in the preparation of this study.

In summary form, this study that we have prepared shows that the cost, the increased cost, of making the change that would be visualized in the standards that are set up in this study would be approximately 5 percent.

This study is available to you gentlemen for your review and consideration if you wish to do so. (See p. 600.)

Household paper towels, which are sold in rolls, come in a number of sizes. Our company presently makes two sizes, which we selected after a lot of research into consumer uses and preferences regarding paper towels.

We know, for instance, that because our towels are somewhat larger in sheet size than others, the housewife will use one of our towels for many applications where she would, by necessity or preference, use more than one of the smaller towels. It was our research into consumer needs which told us that we would meet an unfilled demand by selling 120 larger sheets even though our competitors can offer more sheets at prices which meet ours. We know that many consumers will prefer our product.

Three other factors which have the same effect are the number of plies, absorbency, and wet-strength. The latter two are somewhat inconsistent with each other—the more of one, the less of the other. Like sheet size, the number of plies and the relative degrees of absorbency and wet-strength have a direct relationship to the number of towels a housewife will use for any given application.

Every company in our industry tries to outdo the others in making a product which has what it considers to be the best blend of useful characteristics in terms of sheet size, the number of plies, absorbency, wet-strength, and so on. At the same time, every company knows that the housewife will not buy its towels unless they are priced competitively with those of its competitors.

The result is that all of the characteristics I have mentioned, plus others such as the bulk or amount of fibers in a sheet, must be taken into account in determining the number of sheets in a roll, so that the package gives the consumer what she wants at a price which she wants and which we can afford.

If the Federal Trade Commission were to decree that roll towels may be sold only in quantities other than those which we have selected to meet a consumer demand, we will have to reduce our sheet size to market our product at a price which we believe the consumer will pay, and I am excluding from consideration at this point increases in price because of the necessity of buying new machines to package new sizes.

I think you should note that the housewives who no longer can buy what they want are going to be unhappy and we will get thousands of letters from disappointed ladies who bought our towels precisely because they liked the difference.

I hope these situations which I have outlined will be helpful to you in terms of explanation, and I hope you see why I am urging reasoning and commonsense where this bill is concerned. When all makers of paper towels must put the same number of towels in a package, and then have the design of that package approved by a central review board that is reviewing every other package, the very nature of competition—diversity—will be lost.

To the extent package standardization will prevent adjustments in net quantity to compensate for product improvements, it will also mean that the consumer will have to pay higher prices or forego a better product at a competitive price.

For instance, one way to improve many sanitary paper products from the user's standpoint is to increase the bulk of the paper sheet. But if you do that on paper towels or bathroom tissue, you have to decrease the number of sheets, because the dispensing fixtures will accommodate rolls of a certain diameter and no more.

A standardization order will preclude the manufacturer from offering to the consumer a product with greater bulk and utility and attractiveness because, if it is packaged according to the standards used for competitive products with less bulk, it won't go into the holder.

Fundamentally, the bill proposes that Government lawyers or economists rather than the consumer, should regulate all the important aspects of presenting a product on the shelf to the shopper. When the manufacturer can no longer determine the most effective way of presenting his product, he will face higher costs and a loss of ability to compete by using fair, nondeceptive, nonprice elements.

All along the line, higher prices. Package standardization will inevitably mean higher production costs, which will have to be passed on to the consumer. Restricting the use of fair and nondeceptive cents-off coupon and similar promotions will deprive the consumer of bargain prices and will require the use of other, perhaps more expensive kinds of promotion, the cost of which also would be passed on to the consumer.

I submit, gentlemen, that the reasons against passage of this kind of legislation are compelling.

And I go back to my original point: there is no sign of significant desire on the part of consumers for additional legislation. And there is ample legislation on the books to protect the consumer.

Thus, if Congress passes this bill, it is saying: "You, Mrs. Consumer, don't seem to be unhappy with the present competitive marketing system and, by reply to survey, have indicated active support for that system. However, Congress believes otherwise. It does not believe the key to successful marketing is freedom and flexibility and you are going to have to pay for new regulations that are going to remove a vital element from industry's competition for your favor."

The key to successful marketing is freedom and flexibility. If we are forced to eliminate or fetter our right to be different and unique in our packaging, we will be taking a step backward in terms of trying to stimulate consumer demand, a step which is counter to our Nation's economic objectives. We are trying to achieve and maintain full employment, stave off inflationary pressures, and maintain a healthy economic Nation. And we know the successful accomplishment of this can be obtained only by creating a higher level of marketing achievement. This bill's objectives run directly counter to that.

Gentlemen, I have attempted to appeal to your reason and your commonsense.

Scott Paper Co. and I personally fail to understand the reasoning or to recognize the commonsense in this bill.

The decision is in your hands, gentlemen—think well on it, recognizing that your conclusions will determine in large degree the future success and well-being of our Nation's economy—and most importantly—the consumer.

Thank you.

The CHAIRMAN. Thank you very much, Mr. McCabe.

Mr. Macdonald, do you have any questions?

Mr. MACDONALD. Thank you. I won't go into a dialog that we usually have with witnesses about their statements with Mr. McCabe, but I take it that although you compressed your statement which I congratulate you for, I was curious about page 2, where you say that some organization called the Opinion Research Corp., participated along with you and others in taking a national survey.

You state that 99 percent of American housewives veto proposals to regulate package shapes and designs.

I was wondering if you knew much about this survey or study. It is the first time we have heard about it and we have been taking testimony for quite some time.

Mr. McCABE. This survey was conducted under the sponsorship of the Grocery Manufacturers Association. What I summarized in this statement were the results of that study, which was based on consumer interviews and conducted by the Opinion Research Institute.

Mr. MACDONALD. As you know, it is not known for people running for office to take polls, and two people running for the same office can come up with polls. One poll will say that X is ahead by 89 percent, with 3 undecided and Y would come up with 82 percent for him and 4 percent undecided and a certain number against him.

So I was curious when you make these bland statements that consumers are happy with today's packaging and they are not misled.

You say 86 percent say that they are not mislead. I was wondering what cross section of the consumers this Grocery Manufacturers Association which hired the Opinion Research Association to poll.

Mr. McCABE. I do not have with me the plan for the study or the numbers of women that were interviewed, but I would be happy to arrange with the Grocery Manufacturers Association to get you that material.

Mr. MACDONALD. I think to have any meaning, to have a meaningful statement, it would have to be buttressed by saying it was taken in all 50 States, or it was taken only in New York, or it was taken in Massachusetts, or just what did happen.

Mr. McCABE. I will make sure that you get the data which supports this statement.

Mr. MACDONALD. I know that I would like to have that, and I ask permission of the chairman to have it made a part of the record when you furnish it.

Mr. McCABE. Yes, sir.

The CHAIRMAN. It will be inserted in the record.

(The information requested, when supplied, will be found in the committee files.)

Mr. Younger.

Mr. YOUNGER. Thank you. If I understand you correctly, it is your considered judgment that this bill as written would increase your costs about 5 percent.

Mr. McCABE. It would increase our costs certainly as we interpret the legislation. The 5 percent is an approximate figure for this particular towel situation on which we ran a study, and which is available to you, sir, for your consideration.

Mr. YOUNGER. I think it would be well to file it with the committee. That, of course, is considerably above the 3.2 percent that is the limit which the administration says is noninflationary.

(The information referred to follows:)

SCOTT PAPER Co.,  
Philadelphia, Pa., August 22, 1966.

Subject: H.R. 15440 and S. 985.

TO THE MEMBERS OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
House of Representatives, U.S. Congress.

GENTLEMEN: Attached is a summary statement of the costs to Scott Paper Company which would result from a hypothetical regulation under the packaging bills being studied by your Committee.

The regulation, while hypothetical, is one which we believe is well within the realm of possibility under the bills. It was chosen on the basis of the purpose of Section 5(d) of the bills as we understand them, namely, to reduce the number of net quantities of products to facilitate price-per-unit comparisons. In selecting the hypothetical regulation, we made certain assumptions, set forth below, as to the market demand for the product involved. Our manufacturing division was then asked to compute the costs which would be involved on the basis of the stated assumptions.

We assumed a regulation, pursuant to Section 5(d) of the bills, prohibiting the sale of two-ply household roll paper towels in net quantities other than 75, 150 and 225 sheets per roll. We further postulated that for every three "regular" rolls now sold in the industry, on the average one roll of 75 sheets and two rolls of 150 sheets would be sold; and that for every "large" roll now sold, one roll of 225 sheets would be sold.

We assumed that all rolls would be wound on the core at the same tension as is presently used to avoid any question of "slack fill" as a consequence of looser winding in one size package than in another.

The figures shown in the attached statement are as accurate as the nature of the problem permits. We believe them to be fully supportable given the assumptions listed above. A regulation differing from the hypothetical one would, of course, involve different costs.

It should be noted that the attached statement relates to only one product manufactured by Scott. It should also be noted that an increase in Scott's costs of manufacturing and distributing a product of one-half or even one-quarter cent per unit may result in an increase in the retail price for that product of one to two cents.

We will be pleased to try to answer any questions you may have concerning the foregoing.

Very truly yours,

SCOTT PAPER Co.

**I. Equipment:**

A. Cost of new equipment and installation (including removal of existing equipment)-----	\$3, 315, 000
B. Unamortized cost of existing equipment-----	1, 447, 000
Total equipment cost-----	<u>4, 762, 000</u>

**II. Operations:**

A. Increase in annual operating costs, excluding packaging and distribution costs-----	254, 000
B. Additional packaging costs-----	529, 747
C. Additional distribution costs-----	388, 420
Total increase in annual operating costs-----	<u>1, 172, 167</u>

**III. Additional cost during 1st year of operation under regulation**

A. Depreciation on new machinery-----	555, 000
B. Unamortized cost of existing equipment-----	1, 447, 000
C. Total increase in annual operating costs-----	1, 172, 167

Total additional 1st year cost----- 3, 174, 167

Average increase in manufacturing and transportation cost per roll ----- 0. 011

Mr. MACDONALD. Will the gentleman yield?

Mr. YOUNGER. Not right now.

Mr. MACDONALD. I was wondering if the gentleman had heard of the steel settlement, and of how much steel thought it needed.

Mr. YOUNGER. I have heard about that. I just wanted to make sure that he was not breaking the 3.2 guidelines.

The CHAIRMAN. Mr. Moss, do you have any questions?

Mr. MOSS. Mr. Chairman, I wasn't going to ask any questions, but my good colleague from California has stimulated one. The 5-per-cent figure would have to be a very arbitrarily arrived at figure, wouldn't it, based upon a hypothesis which might have validity, and might not? The standards which were adopted might well become the standards of the industry, and therefore, you might be faced with no cost conditions; isn't that true?

Mr. McCABE. The study that we prepared in relation to towels is based on a hypothesis; that is right.

Mr. MOSS. Completely, and therefore, we could adopt a different hypothesis and come up with a saving?

Mr. McCABE. You could develop a different hypothesis that would result in a standard being set that conforms with our present standard. That is correct.

However, I think the probabilities of this standard, of our standards prevailing on most of our product lines is not a presumption that we can make with respect to considering this legislation.

Mr. Moss. Well, I think it would be very difficult to make any presumption that would stand up under any close scrutiny until we have completed the legislation efforts of the committee.

I merely wanted to raise that point, because there has been talk of increased costs. It is not necessarily inherent in this legislation that costs would be increased.

I think unless there is conclusive evidence to the contrary, that the record should be quite clear on the fact that any such study would be highly arbitrary, and based upon a hypothesis which might well be prejudiced because of opposition to the legislation.

I am not at this point indicating whether I support or oppose the legislation. I am interested in listening to the testimony.

Now, on the opinion research, Mr. Macdonald has requested the results of that. I would like to have the detailed universe upon which the researchers relied for their conclusions.

I had the experience of sitting through many weeks of hearings by a subcommittee of this committee when we studied certain research operations for preference in radio and television, and the committee found that they had little validity, and that was an official finding of the committee back just a few years ago.

So I would want full details as the basis of any appropriate evaluation of its validity.

Thank you.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. I have no questions, Mr. Chairman, except as a matter of curiosity I was following your prepared statement quite closely and I noticed you departed from it in several instances.

It seems to me that when you were speaking personally to the Congress you chose to avoid that portion of your prepared statement that dealt with the Congressman from a philosophical or personal point of view and I was sort of curious as to why you left that little part of your sermon out.

Mr. McCABE. It was not deliberate, Mr. Keith.

Mr. KEITH. Also, I am a little curious as to the role that your assistant might be playing here, and I was going to propose that we might find some way to inject her into this.

Mr. McCABE. Well, Mrs. Buller is very closely concerned with the reaction of the consumers with respect to packaging and virtually every matter that pertains to our household paper products, and I think that you might comment on how we react to consumer's suggestions, with respect to packaging.

Mrs. BULLER. Allow me to introduce myself as being in charge of Scott Paper Co.'s consumer relations department, and as such we receive a great many letters each year concerning these matters.

As to these letters, for instance, in the past year dating from June 30 of 1965 to June 30 of this year, we received over 10,000 letters dealing with all aspects of our company, and our public acts in the form of products and packages.

These comments, this consumer mail, deals with many different aspects of our company entering into the consumer market. This



includes suggestions for new products, innovations in existing products, and general comments on availability of our products, and this type of thing.

Mr. KEITH. Thank you. I noted that the previous witness mentioned that they had 135,000 pieces of mail in a particular year. You have about 10,000?

Mrs. BULLER. That is right.

Mr. KEITH. Is that correct?

Mrs. BULLER. Yes, sir.

Mr. KEITH. What are the numbers of packages or volume of your business as contrasted with General Foods? Is their interest perhaps more in the food problem than in the question of the paper supplies, or do they do a much larger volume of business than you do? Or perhaps is there more cause to comment with General Foods as contrasted with the Scott Paper Co.?

Mrs. BULLER. I am sure General Foods is somewhat larger than Scott Paper Co., and, also, that while we have a great number of people who are very loyal to Scott Paper Co., perhaps there are less who would write in about these products, but it seems that 10,000 letters are an awful lot of letters.

Mr. KEITH. I would think so.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Mr. McCabe, your products are under supervision as far as the subject goes, by the Federal Trade Commission; is that correct?

Mr. McCABE. That is correct.

Mr. ROGERS of Florida. Have they ever brought an action against your company for deception?

Mr. McCABE. Not to my knowledge, sir.

Mr. ROGERS of Florida. Say, in the last 5 years?

Mr. McCABE. No, sir.

Mr. ROGERS of Florida. So the Federal Trade Commission, which has charge of that, has not brought an action against your company?

Mr. McCABE. No.

Mr. ROGERS of Florida. Who are your major competitors, or how many major competitors do you have, major companies, just as a rough guess?

Mr. McCABE. Six or seven.

Mr. ROGERS of Florida. Do you try to set standards within these six or seven groups? Do you have voluntary standards or not?

Mr. McCABE. Not within the terms that I believe you are thinking of.

Mr. ROGERS of Florida. This bill envisionages a voluntary procedure first. Would you use that procedure, is the industry currently in a state that uses this type of procedure?

Mr. McCABE. We do not have a procedure which in our judgment conforms to what is visualized in this bill; no, sir.

Mr. ROGERS of Florida. Do you label all your products?

Mr. McCABE. Yes, sir.

Mr. ROGERS of Florida. And there has been no action against labeling at all either, I presume?

Mr. McCABE. No, sir.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I don't have any questions. I just want to make the observation that the testimony of Mr. McCabe and some others who have appeared to date, that it seems to me you start out on a certain premise, and then you go ahead with your testimony on the basis that it is bad because of your premise.

Your testimony says that if you have standardization of packages, and if this bill is passed, then it would lead to standardization and that would increase your costs. I think that follows, and that would be true. But you don't point out anywhere in here just how you think it does require standardization. Have you touched on that in any of your testimony at all?

Mr. McCABE. I am not an attorney, sir. Our attorneys have reviewed this bill and they inform me that section——

Mr. PICKLE. If you are not an attorney, what is the purpose of your testimony? Do you object to the bill? You don't point out any place where you do object to it.

Mr. McCABE. Well, I have read the bill and I have discussed the bill with our attorneys, and my conclusions are in terms of our interpretation that this bill will result in standardization.

I am trying to be constructive. I want to bring to the attention of this committee the implications of this legislation with respect to our business. That is the purpose of my being here, sir.

Mr. PICKLE. Well, again I say, you start off with a premise, and on the assumption that this does provide for standardization and therefore it is bad. It would be more helpful if you would point out where we might improve the bill, but you just say it is going to increase costs and you would be against it. It seems to me like you are missing the point, although I think that your testimony is fine, but it doesn't get quite to the point or the question.

The CHAIRMAN. Mr. Satterfield?

All right, Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman. Just to develop a little further the line of Mr. Pickle, I think there has been a strong premise in the whole thread of testimony that we have had before us, and I think a cautious lawyer might very well be justified in picking up this thread.

But there hasn't been much evidence before us that there is any large amount of deception and confusion in the packaging of foods in this country. As I read the bill, before the promulgating authority can set forth any standards there must be a showing that there is deception or real confusion, and these are the two words that appear. Semantically these words are inadequate as far as I am concerned as a lawyer, and I think that this vagueness generated the fears so often expressed. Insofar as section 3, I have not heard a witness testify against this section which standardizes labeling. I wonder if you offered any objection to section 3 of the bill?

Mr. McCABE. As I understand that section, it is designed to outline law with respect to deception in labeling, and we are certainly op-

posed to deception in labeling, and we do everything that we can to make it as easy as possible for the consumer to determine how much is in a package, and the other considerations.

Mr. MACKAY. Well, as I read the section, it says what you shall do. You live within specified law and not within the gastronomic condition of an administrator. Is there anything in section 3 that you think is arbitrary or unreasonable or impracticable?

Mr. McCABE. Based on my understanding of the section, it certainly does not strike me as being arbitrary in the sense that it goes significantly beyond law that is already on the books with respect to deception.

Mr. MACKAY. Now, with reference to the packaging section, there are a couple of specific points that the proponents of this bill propose that I would like for you to comment on.

One is the cents-off feature. You have heard that discussion this morning. Is this device used in your business?

Mr. McCABE. This device is used in our business. It is used more by some companies than others.

We believe that it is a promotional device that is very useful. Under certain circumstances, it offers the consumer a value that is important in terms of introducing new products to the consumer, and also in other ways.

Mr. MACKAY. But it does lend itself to abuse, because of buckpassing where the manufacturer says "I don't have any control over what the retailer charges," so it could be misleading, if there was no understanding between the manufacturer, the wholesaler, and the retailer.

Mr. McCABE. Based on my experience, traditionally in the grocery business, there has not been serious abuse in this area.

Mr. MACKAY. Then speaking generally as one of your company's consumers, your particular products don't lend themselves to deception, do they? Generally, you go in a store and you can see paper napkins and you can see all of the paper products rather easily, can't you, by examination, as distinguished from many other packaged articles?

Mr. McCABE. Assuming the products are properly labeled, as we believe that ours are in terms of contents of the package, the color, and so on.

Mr. MACKAY. I can't see where the thrust of this bill, as I have heard it discussed, would have much application to your industry.

Mr. McCABE. In terms of setting up standards, we feel that there would be serious problems, as I pointed out in my testimony with respect to creating problems that would increase costs to the consumer.

Mr. MACKAY. Finally, I have not understood this bill to standardize all products in the American grocery system. I have understood that it would apply only in cases of deception or confusion.

Have you had any complaints from any source that your packaging confuses anybody in these 10,000 letters that you get?

Mr. McCABE. Yes; we have, sir.

Mr. MACKAY. What have they centered on?

Mr. McCABE. As I pointed out in my testimony, we have had a problem on towels, when we switched from paper to polyethylene. When we had a paper wrapper, we had a little flower on the wrapper,

and when we shifted to polyethelyne on this particular towel product we kept the flower on the wrapper.

Customers wrote in and said that these flowers presented a problem because you couldn't clearly tell whether or not the product itself was decorated, as a result of seeing the flowers on the polyethelyne.

As a result of these letters, we immediately eliminated these little decorations from the polyethelyne. So we get complaints of this type, and when we do we endeavor to take action on them as quickly as we can.

Mr. MACKAY. Thank you.

Mr. GILLIGAN. Thank you, Mr. Chairman.

Mr. McCabe, have you read the Senate report on this bill?

Mr. McCABE. No, sir; I have not.

Mr. GILLIGAN. I am going to cite a couple of sections and ask for your comment on it. There seems to be some confusion in the committee or some doubt on the part of the committee that the intent of this legislation is to provide for standardization. On the other hand, the opposition witnesses appearing before us seem to feel that this is the main fear.

On page 3 of the Senate report, it says:

Out of all these hearings there has emerged a pattern of marketing practices which the committee believes have substantially impaired the fair and efficient functioning of consumer commodity marketing. In particular, the hearings identified certain undesirable conditions and practices to which this legislator is principally directed. They include—

And then they give seven, and the seventh one is:

The proliferation of awkward and fractional weights and quantities, in which many consumer commodities are being marketed.

That is labeled as one of the seven bad practices in the marketplace, to which this legislation is principally directed.

They go on to say:

Testimony before the committee established that present law is inadequate or imprecise to a degree that permits these practices and conditions to flourish unabated.

Then they describe the mandatory provisions of section 4, and then under section 5, on page 7, they say this:

Subsections 5 (d), (e), (f), and (g) establish procedures for the development of standards of weights or quantities for the retail distribution of consumer commodities, placing primary emphasis upon the voluntary product standards procedures of the Department of Commerce.

A weights or quantities standard proceeding is triggered by the determination of the promulgating authority, after hearing, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of the consumer to make price per unit comparisons.

Then, after describing the procedure to be gone through, they say:

Where industry is unable to develop a voluntary product standard within twelve months from the filing of such a request.

Then it says:

The promulgating authority may establish a standard of reasonable weights or quantities, and fractions or multiples thereof, in which the commodity shall be distributed for retail sale.

A little later on they describe how any product issued for distribution in interstate commerce violating these standards shall be seized.

What does that suggest to you, sir, about the thrust or intent of this legislation?

Mr. McCABE. That suggests to me, sir, that this legislation would result in package standardization.

Mr. GILLIGAN. I think that I agree with you.

Thank you.

The CHAIRMAN. Thank you very much, Mr. McCabe.

Our next witness is Mr. Banzhaf, staff vice president of the Armstrong Cork Co. of Lancaster, Pa.

**STATEMENT OF MAX BANZHAF, STAFF VICE PRESIDENT OF THE ARMSTRONG CORK CO. OF LANCASTER, PA., REPRESENTING THE CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY FRED BYSET, CHAMBER ATTORNEY; AND WILLIAM P. NOBLE, ARMSTRONG CORK CO. ATTORNEY**

Mr. BANZHAF. My name is Max Banzhaf. I am staff vice president of the Armstrong Cork Co. of Lancaster, Pa. In addition to building and industrial products, we also manufacture glass and plastic packaging materials and produce a line of floor-care products. My company is a longtime member of the Chamber of Commerce of the United States, which is the Nation's largest business federation, representing more than 3,900 business organizations with an underlying membership of more than 4,300,000 businessmen in 50 States.

Along with other Armstrong officials, I have participated in various activities of the chamber over the years. Currently I am a member of the chamber's manufacture-distribution committee. I am here to present the views of the Chamber of Commerce of the United States on H.R. 15440 and S. 985.

Accompanying me are Fred Byset, an attorney in the chamber's national economic development group, and William P. Noble, an attorney with the Armstrong Cork Co.

The avowed purpose of H.R. 15440 and S. 985, to their proponents, is to assure that information about the content and price of pre-packaged consumer commodities is presented in such a way as to prevent unfair and deceptive practices, and to facilitate consumers' price comparison among competing brands.

This purpose would be achieved in H.R. 15440 by granting additional authority to the Food and Drug Administration and the Federal Trade Commission (1) to regulate the place, prominence, and content of label information; (2) to standardize the weight and quantity of commodity containers; and (3) to regulate or standardize the sizes, shapes, and dimensions of commodity containers.

S. 985 is essentially the same measure, except that it does not contain the provision for the regulation or standardization of container sizes, shapes, and dimensions.

In assessing this legislation, the issue before the Congress is not whether packages and labels shall be truthful and adequately informative. That principle is subscribed to by all.

The issue offered by these bills is twofold:

A. Whether existing regulatory powers under the Federal Trade Commission Act and the Federal Food, Drug, and Cosmetic Act, as

well as under State laws, are adequate to curb unfair or deceptive practices.

B. Whether additional regulatory controls over packaging and labeling would be beneficial or detrimental to the general economy and the consuming public.

While the chamber opposes passage of the bills, it supports the principle that a merchant should truthfully represent his wares. An orderly society requires reasonable regulation and sanction against misleading, unfair, or deceptive business conduct.

Opposition to the bills is in no way a contradiction of these principles. This is so because we believe existing law already provides reasonable and adequate protections against misleading, unfair, and deceptive merchandising methods. In short, we believe existing law makes S. 985 and H.R. 15440 unnecessary.

While that is our main reason for opposing the legislation we also oppose it because some provisions could (1) increase production costs and consumer prices, and (2) curtail product variety and packaging improvements.

These views reflect the attitude of the great majority of our membership. In a membership poll conducted last summer, 96 percent of our respondents agreed with the chamber's opposition to the legislation.

Two bodies of interlocking Federal law bear on the adequacy of existing remedy. They are the Federal Food, Drug, and Cosmetic (F.D. & C.) Act and the Federal Trade Commission (FTC) Act. In addition, weights and measures laws in the various States deal with the bill's subject matter at the local level.

In all but one instance, the provisions of S. 985 are essentially duplications of these existing laws; the one exception is the provision for standardized container weights and quantities in sections 5 (d), (e), (f), and (g). Similarly, H.R. 15440—which is nearly identical to the Senate bill except for the addition of 5(c) (5)—is a repeat in substance of these existing laws.

In one instance, the bills use the exact language of existing law. The wording in section 4(a) (1) to require a label statement of "the name and place of business of the manufacturer, packager, or distributor" is taken from the Food, Drug, and Cosmetic Act.

Other provisions of the bills are paraphrases of existing statutory language. For example, section 4(a) (2) of S. 985 and H.R. 15440 says:

The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of (the) label \* \* \*.

The corresponding sections of the F.D. & C. Act require—

an accurate statement of the quantity of the contents in terms of weight, measure or numerical count \* \* \* prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Other provisions of the bills amount to restatements of present law as interpreted by the courts and the administrative agencies. This is best illustrated by the FTC Act where the law is expressed in broad general terms rather than in specified prohibitions or requirements.

It prohibits all "unfair or deceptive acts and practices in commerce."

As related to the same identity and contents requirements of section 4(a) (1) and (2), this broad language of the FTC Act has been interpreted and applied to require "facts that the consumer considers material to his decision" to appear "in clear, conspicuous type" on the "front or face panel of the container."

In like fashion, the provision in section 5(c) (3) of the pending bills for the regulation of cents-off and economy-size promotions is a restatement of the FTC Act interpretation. The bills would permit the two agencies to—

regulate the placement upon any package \* \* \* or upon any label \* \* \* of any printed matter stating or representing by implication that such product is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents.

Similar language in a judicially approved cease-and-desist order entered by the Commission prohibits implications that—

any savings are afforded from the retail price of products unless such savings represent a reduction from the price at which said products are regularly and customarily sold at retail.

In substance, section 5(c) (5) of H.R. 15440 is also a restatement of FTC Act interpretation. It would allow the agencies to make rules of future application to—

prevent \* \* \* packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers \* \* \*.

This compares with present case-by-case application and interpretation of the FTC Act to prohibit packages that are—

appreciably oversized or in containers so shaped as to create the optical illusion of being larger than conventionally shaped containers of equal or greater capacity.

These examples illustrate the difficulty of fashioning new law that is not a parallel of existing law. They also supply the national chamber's reason for regarding the pending bills as unnecessary for the prevention of "unfair" packaging and labeling.

Our contention that present laws are adequate for the task of consumer protection was emphasized, I think, by the Government witnesses who appeared here earlier and who frequently admitted the applicability of current law to deceptive packaging and labeling.

Now it may be that all of the powers conferred on the enforcement agencies by existing law have not been used fully. In fact, FTC Chairman Dixon said as much in testimony before the Senate Antitrust Subcommittee on March 28, 1962. He said that the Commission had not had many cases dealing with slack-filled containers, and that the Commission had taken no action at all to require ingredients statements, or to forbid deceptive package shapes, or to require that contents "be expressed in such terms and figures as would enable a housewife to make comparative costs \* \* \*." But, he added:

There can be no doubt that the Commission's general powers under existing law would authorize it to issue such orders when false or misleading packaging or labeling result in consumer deception.

In similar vein, also in 1962, the then FDA Commissioner testified that the present F.D. & C. Act "calls for truth in packaging." And

he enumerated how the law "has provisions designed to inform the consumer about the food in the package and thus permit her to make intelligent selections at the marketplace." But, he went on to point out that these requirements have not had "the degree of priority warranted by matters involving health and safety \* \* \*."

Even the proponents of the bills would probably agree that the agencies can now reach most—if not all—of the complaints raised about commodity packaging. As we see it, the issue is not whether the agencies can act, but how. In short, the real and closely inter-related questions posed by these bills are:

1. Shall the FTC and the FDA continue to proceed on the present case-by-case method of enforcement, or be given additional broad lawmaking powers?

2. Shall the FTC and FDA be allowed to standardize packaging?

Let's take up these two questions in that order. First, the case-by-case method of enforcement versus broad agency legislative powers.

We believe that legislative control over packaging should not be given to the agencies because it would cost more in economic detriment than it would be worth in economic benefit. We believe that the power to control package weights, quantities, sizes, shapes, and dimensions as outlined in sections 5(c)(5) and 5(d), (e), (f), and (g) of H.R. 15440 would lead to increased production costs, higher consumer prices, reduced consumer choice, and curtailed packaging innovation.

By present law, the FTC and FDA prevent unfair packaging usually under the case-by-case method. That is to say, if a particular package appears to be unfair or misleading, the packager is brought to trial or hearing, and the agency offers evidence to prove its charge. In this way, the defending businessman has his day in court, and nonoffending packages are relatively free of governmental control.

Government regulation of packaging through the case-by-case system has minimal effect on production costs, consumer prices, and packaging innovation. If the packer follows ethical practices, he is free to choose the packaging methods, materials, styles, and sizes best suited to allow economies of scale. He is free to design his package in a way best suited to accommodate consumer choice. He is free to innovate to provide the consumer with greater convenience and freedom of choice. Only the guilty packager is restrained in his right to exercise these judgments.

By the pending bills, this procedure would be changed; agency action could control ethical packaging as well as the unfair packaging by regulations announced in advance. Under that kind of structure the law would cause heavy expenditures for new machinery and materials, and would cause the abandonment or deny the full use of existing machinery. The result would be increased production costs and higher consumer prices that would naturally follow to cover these added costs.

We know that the Congress has seen fit to delegate its lawmaking power to the FTC and the FDA in other instances, but in the past this lawmaking authority has been given cautiously. It has usually been designed to provide accurate information without undue economic consequences. For example, the FTC's wool-labeling authority gives the consumer information about fabric content, but it does not control



or limit the number of fabrics nor does it put the manufacturer to added expenses.

If the case of the FDA's power to standardize the fill of food containers, the agency does not control or choose the quantity and shape of the container. It simply specifies the degree of fill. Here again the manufacturer can comply without added expense and without a curtailment of inventiveness.

A different situation is presented in the pending bills. The broad agency legislative powers over container quantity and shapes would result in added costs and other economic consequences, as I will illustrate in a moment.

In testifying before this committee earlier in these hearings, the FTC Chairman made a strong plea for broad legislative or rule-making powers to augment the case-by-case method.

It should be noted that on another occasion recently—dealing with antitrust laws also having economic consequences—Mr. Dixon took an opposite position. Testifying against a bill designed to preserve the franchise system of distribution, he told the Senate Antitrust Subcommittee on June 23, “\* \* \* to limit the evolution of antitrust rules of law now would be \* \* \* in conflict with the wise tradition of case-by-case development \* \* \*”

If case-by-case development is a “wise tradition” for antitrust, it is equally so for packaging regulation. Serious economic consequences are involved in both areas. Therefore, we feel that the agencies should not be given the broad legislative powers that are contemplated in these bills.

Now let us turn to the second question—whether the FTC and FDA should be allowed to standardize packages for consumer commodities. This power would be granted to them by sections 5(c) (5), and 5 (d), (e), (f), and (g) in H.R. 15440.

The bills before you state in their preambles and subsequent provisions that their aim is to facilitate consumer price per unit comparisons. To accomplish this, of course, the end objective of the bills must be to standardize packages, hopefully, making unnecessary the arithmetic of dividing quantity into price. Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs, in her testimony before the committee earlier in these hearings, readily admitted that price comparison is the goal and standardization the means to the goal of these bills.

We oppose standardization as being adverse to the consumer's interest and to the national interest for several reasons. Permit me to illustrate some of these adverse effects of standardization.

First, and very important is added cost—which in the long run is paid by the consumers. The added costs which could result will depend, of course, upon the number and variety of regulations issued. If few package changes are ordered, the added costs would be minimal. But it is likely because of standardization that the changes would be extensive throughout industry, and the costs consequently heavy.

Let us review briefly the kinds of costs that are involved. As a manufacturer of glass containers, we would be affected. For each change we would have to obsolete existing glass bottle molds and make new sets of molds at a cost ranging from \$4,000 to \$50,000—depending upon the quantities of the container to be produced. And we are but

one of several glass manufacturers. Incidentally, the mold costs for plastic containers would be even greater.

Even higher costs, however, would be incurred by the manufacturer or producer of the packaged item. Every change would necessitate reengineering and rebuilding a filling line which includes machinery for sorting, weighing, measuring, filling, closing, sealing, labeling, and packaging into shipping cartons. These costs, depending upon the complexity of the line, would range from \$12,000 or \$15,000 up to \$60,000 to \$75,000. And this does not include the expense incurred in lost production during the down time to make the conversion.

But even more serious is that standardization may well lead to proliferation of package sizes, at least in some product categories. It is not clear whether commodities would be standardized by weight or volume of contents; Mrs. Peterson told the committee that it would depend upon the commodity. If some packages are to be standardized by weight and others by volume of contents, there would be a proliferation of package sizes with great additional manufacturing costs. In some instances the building of entirely new filling lines would be required at as much as \$400,000 each. So the potential for increased costs in these bills is great. These costs, in turn, would be reflected in higher consumer prices.

The second adverse effect that we see in the bills is a reduction in the consumer's freedom of choice.

Perhaps in some product categories it might be decided to reduce the number of package sizes. We fear many people do not understand why there is such a wide assortment of packages in varied sizes to be found on the shelves of the supermarket. They assume that many, if not most, of these package sizes are unnecessary, and that the manufacturer is thrusting them upon an unwilling public. For each and every successful package there is a market—a sizable number of customers who want that particular package. Typically, their desire for it is measured by market research—or by test market experience—before any attempt is made to put the package on the shelves as a regular item. And once it's there, if it is not reasonably popular, it doesn't stay on the shelf very long. Competition for shelf space is so keen that only those products that reflect real consumer demand are allowed to remain for very long.

So the great number of packages is by public demand, not by manufacturers' whim. To eliminate some of these packages is to take a benefit away from some segment of the public. Take, for example, a small size package of cleanser—only 4 ounces. Who wants it? Not the housewife who has a large family, of course. But someone wants it and buys it—perhaps people living in a small apartment or in a mobile home. And so it goes. Thus the bills would take from the consumer his freedom of choice and place that choice in the hands of Government officials who are not as close to the marketplace as those whose success in business depends on meeting individual needs and desires of consumers.

Furthermore, it is questionable whether legislating standardized packages would actually produce the intended effect of making it easier for consumers to compare prices of competing products. Manufacturers, of course, do not control retail prices, nor do they set the

terms and conditions of sales to consumers. While the legislation proposes to standardize the quantities and size of commodities packaged by manufacturers, it has absolutely nothing to do with the retailers' selection of the quantities and sizes he will offer to his customers.

Thus, comes this possibility: A certain product might be standardized in 8-, 16-, and 32-ounce sizes. The retailer does not stock each brand of the product in all three sizes. Instead, he sells the 8-ounce package of one brand at 69 cents, and the 16-ounce size of another brand at \$1.25, and the 32-ounce size of a third brand at \$2.49. Obviously, some division would still be required for the consumer to determine which is the best priced purchase.

Even packages of the same size are not automatically free from this process of division to arrive at a price comparison. Retailers, in order to offer the consumer a bargain, may present three packages of a certain brand at the price of two, and five packages of another brand at the price of four. Or, one brand may be priced at four for 59 cents, while another brand in the same category is priced at two for 29 cents, and the third brand at three for 49 cents—all in the same size container.

Beyond the effects on cost and reduced consumer choice, standardization would also stifle innovation. While the detriments of curtailed innovation to the consuming public are obvious, it should also be recognized that innovation and imagination are the best competitive devices of the small businessman.

I know some say that innovation will not be curtailed by standardization; that manufacturers can always make improvements within the rules set up by the FTC and the FDA. They will say that manufacturers can always ask the agencies to modify or change the standards. In theory this is true, but it could not work that way in practice. The reasoning overlooks procedural and marketing practicalities.

For example, a packager is never certain that a new idea will be accepted by the public. He tests the idea by limited production and sales in a few selected markets. Under the bills this meaningful market testing would not be possible. If a particular product becomes locked into package quantities and shapes set by the FTC and the FDA, experimental marketing in other quantities and shapes would be illegal.

Of course, the manufacturer could ask for changes in the standard before conducting his market test. But this, too, is impractical. Through agency proceedings, it would expose the idea to his competitors. Moreover, until the idea has been actually tested by limited production and sales, the manufacturer would not know whether he should ask for new standards.

To put the question of stifling innovation in perspective, suppose H.R. 15440 had been enacted some years ago and the price comparison provisions strictly applied. All manner of products would be standardized as to weight or quantity. Quite likely the consumer would have been denied the convenience of many of the innovative packages that have come on the market in recent years—such as squeeze bottles, aerosol containers, and concentrates.

With the vision of hindsight, it is now possible to write legislation which makes exceptions for such products and containers because they are known. But legislation must deal with what comes after its

enactment. Since we cannot predict today what form scientific developments will take in the future, we must see to it that this legislation does not foster standardization—for that would unquestionably retard packaging and product development.

As an example, consider one packaging improvement my company is trying to perfect. It's called encapsulation in which we package drops of liquid in a membrane. And so, the liquid can be packed in a dry container until its wet form is needed, at which time the application of light pressure will break the capsules. These tiny packages can be in varying sizes, thus containing varying quantities of the liquid.

These tiny packages come in different sizes, as I can demonstrate here for a second. As you can see, the capsules are broken, and the liquid is delivered.

We don't begin to know all of the uses there may be for this packaging process or what problems it will solve. But one thing is certain, standardization could well limit its application and deny its usefulness to the consumer. To illustrate, if the standardized size for furniture polish were 8 ounces in a standardized container, how could he comply with the regulation with a new application we have just created—putting encapsulated furniture polish in a disposable pads?

Here is an illustration. The committee may be interested in these. Here the capsule is contained inside the pad. You crush the pad and the liquid now is available inside the pad, and you can remove a scratch on the tabletop and turn around and buff it with the other side of the pad.

This is but one small potential use of encapsulation. There are perhaps thousands more. But the real significant fact is that encapsulation itself is but one of many other packaging innovations that advancing science can create to provide consumer benefits, if it is permitted to do so.

The answer, according to the bill's proponents, seems simple. Submit the idea to the Government and request a change in the standard. This ignores practical marketing considerations. To change a standard would require a hearing which is public in nature and thus the idea would be prematurely disclosed to competition. A company cannot afford to take this risk. As a result the application of ideas would have to be limited to the structure of the established standards, innovation would be stifled, and the public would lose the benefits of new, better, and more convenient products.

I am fully aware that the bills do not ignore entirely the problems of higher costs, reduced consumer choice, and the limiting of convenience. In standardizing weights and quantities under S. 985, for example, the FTC and FDA would have to give "due regard" to the probable effect on producer costs, consumer costs, and convenience, the packaging materials affected, trade customs, and competition between different types of packaging materials. There is a similar provision in H.R. 15440, except that the agencies would not be required to consider the effect on consumer costs.

Presumably, these factors would be considered to keep higher prices and curtailed consumer choice from being excessive. But, the benefit to the consumer of a very modest additional facility of price comparison by standardization is so minor compared to what he gives up, that even the slightest price increase or choice curtailment is unjusti-

fied. Moreover, due regard to these factors could become something of a formality. The agencies could treat these factors superficially and recite in their orders that due regard had been given. Unless an agency action of this kind proved to be clearly arbitrary, a reviewing court would be reluctant to set it aside.

In the case of control over package sizes, shapes, and dimensions, in section 5(c)(5) of H.R. 15440, the agencies could ignore these cost and other factors altogether. The bill is structured to require their consideration only when weights or quantities are standardized. And, in effect, weights or quantities could also be controlled without a consideration of these factors. The word "sizes" in 5(c)(5) is just another way of saying "weights or quantities."

I don't mean to imply that the FTC and FDA would go about their duties in a capricious fashion, but the bills would set up a potential danger with little compensating benefit. In such circumstances, the danger should be avoided altogether. With so much thought being given today to the protection of criminals from abusive governmental action, it is little to ask that ethical businessmen receive similar considerations.

The national chamber believes that further legislation on packaging and labeling is unnecessary; that the bills largely duplicate existing law; and that existing law, especially the language of the FTC Act, is broad enough to curb all unethical practices.

However, if the committee concludes from the hearings that additional law is needed, the chamber agrees that it would be under a duty to report a recommended bill. But, the committee would also be under a duty to ascertain whether the detriments of such a bill would submerge its expected benefit.

The consumer benefit intended by the bills' proponents is an increased ability to compare prices among competing products. This is largely to be accomplished by the standardizing provisions of 5(c)(5) and 5(d), (e), (f), and (g). These provisions contains inherent detriments for the individual consumer and for the general economy. These are: (1) Increased production costs and higher consumer prices; (2) a substitution of Government choice for consumer choice, (3) curtailment of innovation for consumer benefit.

We urge the committee to reject this legislation as unnecessary and potentially very harmful.

However, if that goal is not obtainable, we ask that the committee at least delete sections 5(c)(5) and 5(d), (e), (f), and (g), to avoid the risk of harmful standardization effects to consumers and to business.

Gentlemen, thank you very much.

The CHAIRMAN. Thank you very much for giving us the benefit of your views and for giving them as you have. Of course, as you say, I notice it is in opposition to one part of the bill. That seems to be your main statement.

Mr. Mackay, do you have any questions?

Mr. MACKAY. I would like to compliment the witness on the spirit and quality of his testimony. I think that you haven't overstated your case and, therefore, it has been twice as forceful as it might otherwise have been. I think that your explicit reference to existing law has been helpful.

I have been interested that most witnesses jump on the packaging section and don't even comment on the labeling section, and you did. You point out what this existing law is. I want to ask you whether you have any complaint about the statement of the law proposed in section 304.

Mr. BANZHAF. My only comment is that they are already covered by existing law.

Mr. MACKAY. This section says that packages must be conspicuously labeled. The proposed law gets down to specifics about where it must appear.

Mr. BANZHAF. I believe that is also contained in the FTC Act.

Mr. MACKAY. In any case, you are saying that you offer no objection to that section.

Mr. BANZHAF. None at all, except that it seems to a layman to be redundant—that we have laws on the books now, and I don't understand why we need to pick up the same language and have another bill. A great deal of those sections are existing language of existing law.

Mr. MACKAY. Your company does not have to deal with the Federal Trade Commission and the Food and Drug; does it?

Mr. BANZHAF. Well, that all depends.

Mr. MACKAY. As a practical matter, you don't have periodical inspections such as the food industry or others?

Mr. BANZHAF. Well, as I understand you, no. But that does not mean that we aren't subject to the provisions that they may have.

Mr. MACKAY. Well, your experience with these agencies, as you have said a while ago, is that they have not been capricious; have they?

Mr. BANZHAF. You may be asking a legal question to which I have no degree of competence.

Mr. MACKAY. I am asking, as a freshman Congressman, whether the conduct of these existing agencies strikes you as capricious.

Mr. BANZHAF. As I understand it, yes; they have been capricious as the word "capricious" is defined by the courts and there are court cases clearly of record, of capricious acts. Yes, this is true.

Mr. MACKAY. Based upon your own experience in your own business?

Mr. BANZHAF. I would have no experience of that.

Mr. MACKAY. Much of this testimony rolls out the monster theory of government and infers that people in government are not going to behave rationally or fairly. I just wanted to know whether, based on your own experience with government officials to date, you feel those fears are justified.

Mr. BANZHAF. May I put it another way, and maybe this is not quite accurate. I think that I can state what our fears are.

If you issue a man a blank check, you assume that he is going to write it in a rather substantial amount, and not a minimum amount. It does seem to me that we are, in effect, by eliminating case-by-case procedure, giving the agencies a blank check. This naturally causes fears in the minds of businessmen. What will they do with this blank check? You naturally assume the worst.

Mr. MACKAY. Again I was trying to get a judgment about the functions of the Government. I think that the fears you have expressed

are justified. I am a lawyer by trade, and I do think that the power granted here is broad and that it could be abused. I think that you have gone to the heart of the matter when you say that we must balance the benefits to the consumer deriving from this fiercely competitive product marketing against denying the consumer a yardstick that is highly meaningful to the consumer in making price comparisons. I think that you have stated the case well. Thank you very much.

Mr. BANZHAF. Thank you.

Mr. YOUNGER. Thank you, Mr. Chairman.

I think the testimony of the chamber could be enlarged considerably if you put in the number of cases where the orders of the Food and Drug Administration and the Federal Trade Commission have been issued and the cases which have gone to court, and which the court has overruled.

We have cases right in our own district. One case where the order was made, and they went to court, and the case went along for about 2 years before they finally got the decision. Well, the businessman won the case, but in the meantime he was broke and it cost him about \$150,000 in fees, and he lost his business.

There was a party in the office this morning, with two cases in California, one was concerned with the pure food and drug orders, and then the case went to the circuit court and the circuit court overruled the pure food and drug but the firms were killed completely. In one case it cost them \$18,000, and I don't know what the cost was in the other one.

I think businessmen have had experience which justifies them in having some doubt about what should be done. I believe that there are certain additional powers that ought to be given, to both the Food and Drug Administration and the Federal Trade Commission, but I think that they ought to be given as additions and amendments to those acts. We haven't had anything to my mind presented here that can't be covered and completely cured by amendments to those two acts. That can be done without creating another Government bureau. If you create a bureau, goodness knows they are going to have to have something to do. They all do that, and they enlarge, and they grow. I think the solution if we have one, is to enlarge on the existing law, and give additional powers to these two agencies. But I think you should have given us a good many cases in here which I know the chamber has.

(The information requested follows:)

ARMSTRONG CORK Co.,  
Lancaster, Pa., August 29, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: At the conclusion of my testimony August 23 on the packaging legislation, on behalf of the Chamber of Commerce of the United States, Congressman Younger suggested that it would be helpful to the Committee if we furnished examples of actions on the part of the administrative agencies that were overruled by the courts. Accordingly, we have compiled a list of appellate court cases which is attached to this letter.

We hasten to assure you that this is not all of the cases on record. Time does not permit the research necessary to fully cover the subject. This is only a small sample but we believe it is adequate to demonstrate the point that the

administrative agencies can act with caprice or make decisions not based upon substantial evidence or extrapolate unwarranted conclusions from inadequate data. Since this possibility exists, and since it is recorded that they have so acted, then certain provisions of H.R. 15440 as currently written permit capricious and arbitrary action—not on a case by case basis as with present law but across whole industries. This broad power could be catastrophic to those industries affected to say nothing of the gross damage to the consumer and the economy as well.

Our concern can be documented by reading these cases and imagining that the actions of the agencies were inflicted upon whole industries instead of individual companies. Particularly germane to the issue are the comments of the courts which clearly show the time, expense and inconvenience experienced by private litigants merely because the agencies acted in an arbitrary, capricious manner or made decisions not supported by substantial evidence.

We call your particular attention to the practical consequences of conferring broad powers to the agencies if such powers are exercised in a capricious or arbitrary manner involving a whole industry. The time required in the courts to overturn such arbitrary and capricious decisions might be substantial and during the ensuing period the industry would, for all practical purposes, have no choice other than to capitulate for it could not afford to remain idle until the courts acted.

Due to the lateness of the hour we regret that several of the members of the Committee could not be present during our testimony for we believe we could have helped them in answering some questions that have been particularly bothersome throughout the hearings. Congressmen Dingell and Macdonald especially have been rightfully concerned in trying to discover where H.R. 15440 provides for "standardization" of packaging as has been claimed by so many witnesses.

We suggest that the Committee refer to the portion of the Bill that begins with line 17 on page 7 and continues through line 4 on page 8. Please note that this does not refer to deception but to price comparisons. While the word "standardization" does not appear, synonyms for the word are clearly present. For example, to "promulgate \* \* \* regulations effective to establish reasonable weights or quantities, or fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale" is another way of saying "standardization". If "standardization" is not meant by this language, then we respectfully submit that the Committee would be well advised to change the language to more accurately reflect what is intended and thus relieve the possibility of standardization which both opponents and proponents of the bill seem to agree would clearly be undesirable.

I would appreciate it if you would include this letter and its attachment in the record of hearings. And, again, may I state that we are grateful for the searching and sincere inquiry the House Interstate and Foreign Commerce Committee is making into the proposed legislation. We hope that in some small way we have been able to help the Committee in its deliberations.

Very truly yours,

MAX BANSHAF,  
Staff Vice President.

[Attachment A]

#### FOOD AND DRUG ADMINISTRATION CASES

1. *Nolan v. Morgan, et al*, 69 F. 2d 471 (7th Cir. 1934). Issue was the standard of identity for dry peas; petitioner was in business of processing, canning and marketing dry, ripe peas which were first soaked in hot water to soften them and to swell them to their original shape and color. The Administrator required that containers of these dry peas contain the legend "Below U.S. Standard. Low Quality But Not Illegal. Soaked Dry Peas". This is in contrast to unripe or immature canned peas which do not have to bear the above label; there was testimony to the effect that both products have nutritional value and that neither was superior to the other in any significant manner.

The court held:

"\* \* \* we cannot regard as 'reasonable' the regulation which fixes immature, unripe peas as the standard for canned peas generally, requiring the dry peas



product to be labeled in a manner which would convey to the public the impression that it is a degraded and inferior article of food, which in fact it is not." (Page 473)

"In our view the entire legend with which it was demanded appellees should label their product is unwarranted unreasonable. 'Below U.S. Standard' should not be required, because the fixing of the one article as the standard is arbitrary and unreasonable to the same degree as if it had been required that the canned dry peas be the standard and the immature peas a descent therefrom." (Page 474)

2. *Willapa Point Oysters, Inc. v. Ewing*, 174 F. 2d 876 (9th Cir. 1949). Rehearing denied, 338 U.S. 860, 94 L. ed. 527, 70 S. Ct. 101, 339 U.S. 945, 94 L. ed. 1360, 70 S. Ct. 793. Issue concerned the standard of identity and the standard of fill of containers for canned oysters; the Administrator ordered that packers of eastern and southern oysters have the option of labeling their product "cove oysters" or "oysters" while requiring western canners to label their product "pacific oysters". Petitioners objected that this was an unreasonable order since it gave exclusive use of the generic term "oysters" to the eastern and southern packers and denied use of that term to western packers when, in effect, the product was the same for all sections of the country.

The court held in favor of the petitioners and stated:

"Permitting one segment of the sea food industry to enjoy the exclusive use of a term naturally associated with and normally applied to an article of food in common use under a common name without the most cogent reasons directly pertinent to the protection of the consuming public, appeals to us as being outside the bounds of reason and fairness. A purchaser who inspects the two products side by side, one labeled 'Oysters', the other 'Pacific Oysters', would probably be left with the impression that the latter are in some form a typical, possibly not a true member of the oyster family. We think that the danger inherent in such a situation makes it manifestly unfair to that portion of the industry discriminated against, and to that extent we regard the requirement as arbitrary, capricious and an abuse of discretion." (Page 897)

3. *Cream Wipit Products Co. v. Federal Security Administration*, 187 F. 2d 789 (3rd Cir. 1951). Issue concerned an order of the Federal Security Administrator (predecessor of Secretary of Health, Education and Welfare) which established a standard of identity for salad dressing; the order permitted the addition of water and petitioner wanted to include, as an alternative authorization, the inclusion of cream, milk, milk solids or nonfat dry milk solids as a substitute for part of the water; government argued that to permit a label statement regarding milk or cream in the dressing would be misleading because only small amounts are possible in salad dressing and these were insignificant to affect the taste and nutritional advantages of the dressing; one Government witness, a chemist, testified to the same effect; petitioner had been in the salad dressing business for 16 years and had used cream, milk et al in its formula during this period.

The court held that there was no substantial evidence to support the Commission's finding and that it would be overturned.

"The very mixture in question has a commercial history. Whatever that record would reveal as to advertising and customer reaction, such evidence is obviously of so much greater probative value than one man's prediction of future customer reaction offered without stated basis as further to emphasize how scant is the basis of the critical findings of fact in this case. Considered alone, the evidence was of small probative value. In relation to the type of evidence reasonably anticipated in the circumstances of the case, that very slight proof must be characterized as unsubstantial." (Page 791)

4. *United States v. Lord-Mott Co., Inc.*, 57 F. Supp. 128 (D.C. Maryland 1944). Issue involved violation of the standard quality for canned peas: the regulation of the Administrator required that the alcohol insoluble solids in certain peas should not exceed a specified percentage of the product; under these standards over 25% of all peas grown in Maryland, New Jersey and Delaware during 1941 would have been substandard.

The court held for the petitioners and stated:

"\* \* \* we have here a clear case where an administrative agency has promulgated a regulation, the force and effect of which is to impose a hardship upon those affected by it which is not warranted or required by either the expressed or implied language of the statute, and, therefore, such a regulation must fall." (Page 182)

"It is also true that, for this reason, his findings are to be accepted as conclusive if supported by substantial evidence, provided always, however, they are within statutory and constitutional limitations \* \* \* In the present case, we find they are not within either limitation." (Page 133)

5. *Cook Chocolate Co. v. Miller et al*, 72 F. Supp. 573 (D.C.U.S. District of Columbia 1947). Issue involved standard of identity for Cacao products; petitioner is a manufacturer of chocolates which contain certain added vitamins; in order to sell its product petitioner would have to get an amendment to the Cacao products regulations; petitioner made application to the Administrator for a public hearing on this question and the Administrator refused to hold the hearing saying there was no reasonable ground shown for it.

The court was faced with deciding whether motions to dismiss the complaint should be sustained; it held that the complaint should not be dismissed and stated:

"However, if the foregoing allegations of the petition filed with the Administrator are true, the action of the latter [in denying a public hearing] is clearly arbitrary. His power to fix regulations is given whenever 'in the judgment of the Administrator, such action will promote honesty and fair dealing in the interest of consumers' and his holding that the plaintiff's application did not show reasonable grounds was not based upon this power but apparently upon some general authority not vested in him by the statute to define whether or not the addition of vitamins to chocolates to be used as a confection would be used by the public in sufficient quantities to justify a new regulation or an amendment to the existing regulation." (Page 574)

#### FEDERAL TRADE COMMISSION CASES

1. *Carr v. F.T.C.*, 302 F. 2d 688 (1st Cir. 1962). Issue concerned the processing of wool remnants under the Wool Products Labeling Act; petitioner argued that his acquiring wool remnants and reselling them in packaged form does not require a label calling said products "reprocessed"; the court held for petitioner and the Commission asked for rehearing; at the rehearing the Commission argued that administrative practice is the ultimately determining factor in statutory construction and that its past practice, as reflected in a whole page of citations and consent orders, accompanying the petition for rehearing, indicates the petitioner's activities required his product to be labeled "reprocessed"; the Commission's argument at rehearing about its administrative practice and its expertise in these matters was the first time such a position was advanced.

The court held for petitioner and stated:

"In general matters, even though not obliged to do so, we commonly make our own research. But a court cannot be expected to rummage among administrative rulings and consent orders *sua sponte* when the party most directly involved and knowledgeable makes no suggestion that anything would be found there. For a governmental agency best familiar with its own practice with respect to a matter directly in issue, and now said to be of paramount importance, to make no mention of the subject until after it had lost the case on another ground, if deliberate, is a breach of duty to the court and, if inadvertent, is still inexcusable. The Commission's petition for rehearing raising this allegedly vital point contains no mention of why it was first developed at this late date, let alone any apology for so doing." (Page 692)

2. *Rayco Corporation v. F.T.C.*, 317 F. 2d 290 (2nd Cir. 1963). Issue concerned the preticketing of the price on sunglasses; evidence disclosed one isolated sale at less than the preticketed price in Hartford, Connecticut, opinion evidence by one retail druggist that petitioner's preticketed prices were false and petitioner would place any price ticket on the items that was requested by retailers; in contrast, there was a total absence of any evidence concerning actual retail sales in any given sales area and petitioner sold many grades of sunglasses, all of which had a influence upon the price ultimately charged.

The court held for the petitioner and stated, at Page 294:

"There may have been sufficient evidence here to justify suspicion that a preticketing policy was being deceptively used and enough to justify investigation but such meagre proof is not enough to justify a cease and desist order."

<sup>1</sup> It should be noted that this case deals with the very real problem of whether or not one has the right to be heard at all before deciding whether one's case has merit or not.

The court also cited the remarks of the Seventh Circuit in *Nitresh Industries, Inc. v. F.T.C.*, 278 F. 2d 337 (7th Cir. 1960), Cert. Denied 364 U.S. 883, 81 S. Ct. 173, 5 L. Ed. 2d 104 (1960) as follows:

"The Commission, as other administrative agencies, occupies a unique position which was unknown to common law jurisprudence. The Commission wears all of the hats involved in the proceedings instituted under its authority. It is, at once, the accuser, the prosecutor, the judge and the jury. The wide scope of its discretion in the resolution of questions within its realm is founded and sustained by the courts upon the fact that its jurisdiction exists in a specialized field, wherein expertise is felt to be a necessity. Under those circumstances, we feel that the Commission should assume a wider responsibility than that necessarily undertaken by a private litigant and substantiate its injunctive order upon the concrete basis of a thorough investigation and full presentation of evidence whenever the existence of unfair or deceptive practices is charged against any respondent." (Pages 340-341)

3. *Carlay Co. v. F.T.C.*, 153 F. 2d 493 (7th Cir. 1946). Issue concerned advertisements which represented that excessive weight could be removed from the human body through the use of petitioners' product and weight reducing plan without restricting the diet and that the removal of excess weight would be "easy"; Commission insisted that all advertisements of the weight-reducing plan contain the statement that it was necessary to adhere to a restricted diet and that such adherence was essential to weight reduction; petitioners objected to the Commission's conditions and this appeal followed; the plan involved eating of petitioners' candy just before a meal so that the appetite would be depressed and the intake of food would be lessened; in effect, it is the appetite which is reduced; petitioner had seven experts testify, five of whom were physicians, and all stated that by taking petitioners' candy before a meal, a weight reduction would result through reduced appetite; in contrast, the Commission's experts merely stated the candy in and of itself did not contain any weight-reducing elements but that the final result would be a "reduced diet"; petitioners also introduced into evidence tests conducted on 112 persons, all of whom experienced a weight reduction.

The court held for petitioners and stated, at Page 496:

"There is no evidence in this record to support a finding that it is necessary, in order to follow the suggested plan, that the user adhere to a restricted diet. The facts are plain, it being undisputed that eating candy before meals curbs the appetite, lessens intake of food and involves no restriction of diet but automatically restrains the desire for food. This, we think, is all that petitioners have ever claimed; this, we think, is all that their advertising represents. There is absolute absence of any deceptive representation. It follows that there is lack of substantial evidence to support the finding that a rigorous or restricted diet is necessary."

4. *Evis Manufacturing Company v. F.T.C.*, 287 F. 2d 831 (9th Cir. 1961) Cert. Denied 368 U.S. 824, 7 L. Ed. 2d 28, 82 S. Ct. 43. Issue concerned the making of representations in connection with the sale or distribution of a water conditioner; the Commission's evidence consisted of the testimony of 19 experts who ran tests on the water conditioner under laboratory conditions; the tests, however, disregarded the manufacturer's installation and use instructions; the Commission's other evidence was an admission by petitioners' counsel that of the 100,000 units sold perhaps 3% or 3,000 installations might not have been successful; in contrast, petitioners put on the stand 91 witnesses who had used its water conditioner and all testified to its success in their operations; the full Commission took the position that the admission of counsel about 3,000 bad installations would more than offset the 91 endorsements.

The court held for petitioner and stated that the Commission was in error in disregarding the testimony of petitioners' witnesses with respect to the good results experienced with the water softener; also, the court held that the statement of petitioners' counsel with respect to 3,000 unsatisfactory installations could not be construed as a full "admission" since it was not intended as such and since it could be refuted in and of itself by the 97,000 installations that could have been successful; in essence, then, the court held that the Commission's order was not based on substantial evidence and the case was remanded.

5. *Gelb v. F.T.C.*, 144 F. 2d 580 (2nd Cir. 1944). Issue involved representations that a cosmetic preparation known as "Clairol" reconditioned the hair or restored its natural or youthful color; only one witness testified that the product

would not recondition the hair while many other witnesses testified to the contrary; in particular, petitioner's expert chemistry witness so testified and his testimony was not contradicted by the Commission.

The court held that the Commission's order was not supported by substantial evidence and should be modified to remove any prohibition against advertising that Clairol did, in fact, recondition the hair.

6. *Magnafo Company, Inc. v. F.T.C.*, 343 F. 2d 818 (D.C. Cir. 1965). Issue involved use of description "Lifetime Charge" with respect to an automobile battery; petitioner acknowledged that such a description could be ambiguous and could be deceptive but felt that by certain qualifying phrases, the objections would be removed; the Commission disagreed and issued a cease and desist order against petitioner; the Commission did say that if petitioner can satisfactorily demonstrate that the trade name may be used nondeceptively, it can request appropriate modification of the order.

The court held that the Commission's order must be reversed. At Page 320 the court stated:

"So long as the Commission agrees that the ability of petitioner to qualify its trade name remains an open question, it cannot deprive petitioner of this valuable asset without affording him a full hearing on the issue \* \* \* As the result of the Commission's peremptory withdrawal of the case from the hearing examiner, petitioner was never afforded an opportunity to present evidence relevant to the remedies problem, or even to argue that the material he offered to present was relevant to the Commission's consideration of the problem."

7. *Elliott Knitwear, Inc. v. F.T.C.*, 286 F. 2d 787 (2nd Cir. 1959). Issue involved use of trade name "Cashmora" for sweaters which contained 30% Angora Rabbit and 70% Lambs Wool; Commission argued that since the sweaters contained no cashmere, and since trade name represented the product so labeled did contain cashmere and was therefore false, misleading and deceptive, petitioner should cease and desist from using the trade name on all its wool sweater products which were not made or comprised of a substantial amount of cashmere; on each sweater was a label which set forth the percentage of Angora and Lambs Wool in the sweater.

The court held that the Commission's choice of remedy, i.e., to cease and desist from use of the trade name even with qualification, was an abuse of discretion since the fiber content of the sweaters was set forth on a label which was attached to the sweaters; the case was remanded to the Commission for further hearings to determine how deceptive trade name actually is and whether some qualifying phrases might not cure all defects.

8. *Dearborn Supply Co. v. F.T.C.*, 146 F. 2d 5 (7th Cir. 1944). Issue involved advertisements of petitioner's product "Mercolized Wax" which the Commission argued may, under certain circumstances, be harmful to the user because of the ingredients from which the product was composed; the Commission also found that if certain precautions were followed in the use of the product, no injurious effects would be experienced; however, the Commission issued a cease and desist order against petitioner's advertisements for their products on the grounds that the precautions in use of the product were not set forth in the advertisements; but the precautions were in each package of the material which was sold at retail.

The court held that the Commission did not have substantial evidence to support its cease and desist order on the grounds that its sole support for the order was certain inferences, assumptions and innuendoes created at the hearing. The court stated, at Page 7:

"As already shown, there was no proof in support of the complaint except certain excerpts from petitioner's advertisements. We should think under such circumstances that petitioner would have a right to assume that respondent [Commission] was relying solely upon such excerpts and not upon some other matter or proposition not included in the stipulation or otherwise offered to be proved. While we are dealing in inferences, we think it must be inferred that respondent, at any rate at the time of the original hearing, regarded the portions of the advertisements not included in the stipulation as immaterial to the issue between the parties, and in any event it appears certain that petitioner was justified in indulging in such inference."

Mr. BANZHAF. Perhaps it is an oversight.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman. I have only one question.

I followed with great interest your statement, and I found it quite helpful. Your conclusions are at the top of page 13, as I understand it, and you concluded by hoping that the Government would give equal consideration to ethical businessmen as to criminals. Is that the standard that you hope to establish?

Mr. BANZHAF. That seemed to us to be a reasonable request, Mr. Gilligan.

Mr. GILLIGAN. Up to there I was with you. I lost the thread of your argument on that one.

The CHAIRMAN. Thank you very much.

There are two gentlemen that I had hoped to have on the list this afternoon and you may be excused, and we thank you. We will not be able to get to you. I wonder if you would want to put your statements in the record. If you do not, you will be called in the morning, but anyone who does want to put a statement in the record, we will be glad to receive it.

Tomorrow we will meet at 10 o'clock and we will perhaps go into a night session tomorrow night.

The committee is recessed until tomorrow morning at 10 o'clock.

(Whereupon, at 5:50 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 24, 1966.)









**Part 2**  
**FAIR PACKAGING AND LABELING**

---

---

**HEARINGS**  
**BEFORE THE**  
**COMMITTEE ON**  
**INTERSTATE AND FOREIGN COMMERCE**  
**HOUSE OF REPRESENTATIVES**  
**EIGHTY-NINTH CONGRESS**  
**SECOND SESSION**  
**ON**  
**H.R. 15440, S. 985**  
**AND SIMILAR BILLS RELATING TO FAIR PACKAGING**  
**AND LABELING**

---

**JULY 26, 27, 28, 29; AUGUST 2, 3, 4, 16, 17, 18, 23, 24, 25, 30, 31;**  
**SEPTEMBER 1, 7, 8, 1966**

---

**Serial No. 89-45**

---

**Printed for the use of the**  
**Committee on Interstate and Foreign Commerce**



**U.S. GOVERNMENT PRINTING OFFICE**  
**WASHINGTON : 1966**

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

WALTER ROGERS, Texas  
SAMUEL N. FRIEDEL, Maryland  
TORBERT H. MACDONALD, Massachusetts  
JOHN JARMAN, Oklahoma  
LEO W. O'BRIEN, New York  
JOHN E. MOSS, California  
JOHN D. DINGELL, Michigan  
PAUL G. ROGERS, Florida  
HORACE R. KORNEGAY, North Carolina  
LIONEL VAN DEERLIN, California  
J. J. PICKLE, Texas  
FRED B. ROONEY, Pennsylvania  
JOHN M. MURPHY, New York  
DAVID E. SATTERFIELD III, Virginia  
DANIEL J. RONAN, Illinois  
J. OLIVA HUOT, New Hampshire  
JAMES A. MACKAY, Georgia  
JOHN J. GILLIGAN, Ohio  
CHARLES P. FARNSLEY, Kentucky  
JOHN BELL WILLIAMS, Mississippi  
BROCK ADAMS, Washington

WILLIAM L. SPRINGER, Illinois  
J. ARTHUR YOUNGER, California  
SAMUEL L. DEVINE, Ohio  
ANCHER NELSEN, Minnesota  
HASTINGS KEITH, Massachusetts  
WILLARD S. CURTIN, Pennsylvania  
GLENN CUNNINGHAM, Nebraska  
JAMES T. BROYHILL, North Carolina  
JAMES HARVEY, Michigan  
ALBERT W. WATSON, South Carolina  
TIM LEE CARTER, Kentucky

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

### *Professional Staff*

ANDREW STEVENSON  
KURT BORCHARDT

JAMES M. MENDER, Jr.  
WILLIAM J. DIXON

# CONTENTS

<b>Hearings held on—</b>	<b>Page</b>
August 24, 1966.....	625
August 25, 1966.....	713
August 30, 1966.....	771
August 31, 1966.....	811
September 1, 1966.....	887
September 7, 1966.....	941
September 8, 1966.....	973
<b>Statement of—</b>	
Allen, Kenneth C., vice president for scale operations, Hobart Manufacturing Co.....	691
Barker, Lawrence, commissioner of labor, State of West Virginia, representing the National Conference on Weights and Measures....	654
Bell, Robert E., vice president for engineering, Toledo Scale Corp. ....	691
Bennett, Milton I., president, National Flexible Packaging Association..	802
Boukalis, Mary Ann, assistant to the legislative representative, National Grange.....	807
Brooker, James, Chief of Inspection and Certification Service, Bureau of Commercial Fisheries, Department of the Interior.....	965
Bruce, Robert C., attorney-adviser, Office of Legislation, Department of the Interior.....	965
Bucy, Charles W., Associate General Counsel, Department of Agriculture.....	943
Burditt, George M., chairman, Weight and Measures Committee, Chicago Association of Commerce and Industry.....	908
Callahan, Robert L., Jr., counsel, American Bottlers of Carbonated Beverages.....	708
Cannon, Dan, policy executive, National Association of Manufacturers Marketing Committee.....	811
Cawley, Francis R., executive director, Label Manufacturers National Association, Inc.....	746
Cheney, R. L., executive director and general manager, Glass Container Manufacturers Institute.....	697
Cohen, Hon. Wilbur J., Under Secretary, Department of Health, Education, and Welfare.....	31, 61, 92, 174 (pt. 1); 973
Connor, Hon. John T., Secretary, Department of Commerce.....	31, 61, 92 (pt. 1); 973
Corso, Frank Mitchell, chairman, Shoppers Against Deception (S.A.D.).....	931
Crowther, Harold E., Deputy Director, Bureau of Commercial Fisheries, Department of the Interior.....	965
Dixon, Hon. Paul Rand, Chairman, Federal Trade Commission.....	31, 61, 92, 174 (pt. 1); 973
Doherty, James F., legislative representative, AFL-CIO.....	771
Draper, Anne, research associate in consumer affairs, Washington, D.C.....	771
Giddings, Ernest, legislative representative of the National Retired Teachers Association and the American Association of Retired Persons.....	765
Gosnell, John A., secretary and general counsel, National Small Business Association.....	877
Grange, George, Deputy Administrator, Consumer and Marketing Service, Department of Agriculture.....	943
Halverstadt, Albert N., vice president-advertising, the Procter & Gamble Co.....	667
Helmlich, William, vice president, Association of National Advertisers, Inc.....	713

## Statement of—Continued

Hollomon, Hon. J. Herbert, Assistant Secretary of Commerce for Science and Technology.....	Page 973
Howard, Dr. John A., representing the Grocery Manufacturers of America, Inc.....	825
Manischewitz, D. Beryl, representing the National Association of Manufacturers.....	811
Mercill, Alan, legislative assistant for the National Retired Teachers Association and the American Association of Retired Persons.....	765
Milius, Daryl D., senior vice president and general merchandise manager, J. J. Newberry Co.....	921
Miller, Clinton R., legislative advocate, National Health Federation.....	937
Newman, Mrs. Sarah H., general secretary, National Consumers League.....	887
Pattison, E. Scott, secretary and manager, Soap & Detergent Association.....	643
Rankin, Winton B., Deputy Commissioner, Food and Drug Administration, Department of Health, Education, and Welfare.....	973
Reed, Dwight C., assistant executive vice president, American Bottlers of Carbonated Beverages.....	708
Reuter, Ralph R., chairman, Metropolitan New York Consumer Council, Inc.....	864
Ridley, Mrs. Helen E., representing the Grocery Manufacturers of America, Inc.....	825
Ring, Daniel S., general counsel, National Paint, Varnish & Lacquer Association, Inc.....	625
Sandbach, Walker, executive director, Consumers Union.....	720
Sanders, Arthur, executive secretary and counsel, Scale Manufacturers Association, Inc.....	691
Schindel, Philip W., executive director, Variety Stores Association.....	921
Skinner, Lloyd E., president, Skinner Macaroni Co., Omaha, Nebr.....	877
Sprunk, James A., counsel, Glass Container Manufacturers Institute.....	697
Swankin, David, Executive Director, President's Committee on Consumer Interests.....	973
Talcott, Hon. Burt L., a Representative in Congress from the State of California.....	942
Yohalem, Aaron S., senior vice president, Corn Products Co.....	629
Additional material supplied for the record by—	
Advertising Association of the West:	
Letter from Charles W. Collier, president.....	1091
Attachment I—How food companies rely on impulse decisions.....	1096
Attachment II—Companies which rely on impulse purchases.....	1097
Advertising Federation of America:	
Letter from William P. Dunhan, operations officer.....	1091
Attachment I—How food companies rely on impulse decisions.....	1096
Attachment II—Companies which rely on impulse purchases.....	1097
Advertising Federation of America, Southwest 10th District:	
Letter from Jack Timmons, governor.....	1101
Resolution on packaging and labeling bill.....	1101
AFL-CIO Executive Council, statement of.....	1067
Agriculture, Department of, illustrations of cents-off labels.....	961-963
Amalgamated Meat Cutters & Butcher Workmen of North America, letter from Patrick E. Gorman, secretary-treasurer.....	1147
American Association of Advertising Agencies, Inc., letter from John Crichton, president.....	1102
American Bottlers of Carbonated Beverages, statement of Dwight C. Reed, assistant executive vice president.....	1057
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO):	
Exhibit I—Instant coffee, Safeway, Arlington, Va., April 26, 1966, illustrating "cents off" offers (table).....	777
Exhibit II—Selected cookie weights and prices, First National, Westchester County, N.Y., week of April 26, 1966 (table).....	777
Exhibit III—Changes in cereal packaging and prices, March 15-April 15, 1966, as reported by Consumers Cooperative of Berkeley (table).....	778

# CONTENTS

V

## Additional material supplied for the record by—Continued

American Federation of Labor, etc.—Continued	
Exhibit IV—Examples of cooking oil, quantity, descriptions, and prices, Safeway, Arlington, Va., April 26, 1966 (table).....	778
Letter dated September 2, 1966, re proposed language to revise section 4(a).....	796
American Trial Lawyers Association, statement of Theodore I. Koskoff, national legislative chairman.....	1045
Anderson, Clayton & Co., Foods Division, letter from Claude T. Fuqua, Jr., president.....	1120
Arkansas State Plant Board, letter from Andrew L. Little, director, Division of Weights and Measures.....	1126
Arnell & Smiths, letter from David S. Yates, executive vice president.....	1129
Association of California Consumers, letter from Robert R. Barton, executive secretary.....	1111
Barker, Lawrence: Resolution on fair packaging and labeling legislation adopted at 51st National Conference on Weights and Measures, Denver, Colo., July 11-15, 1966.....	655
Bloch Bros. Tobacco Co., letter from James B. McCluskey, secretary.....	1130
Bond & Starr, Inc., letter from George L. Bond, Jr., president.....	1086
Boyd, George K., M.D., Providence, R.I., letter from.....	1156
Buffalo, city of, Bureau of Weights and Measures, letter from Leo A. McNamara, sealer.....	1114
Canners League of California:	
Letter from M. A. Clevenger, executive vice president.....	1146
Resolution of board of directors.....	1147
Carnation Co.:	
Letter from Robert F. Daily, attorney.....	1141
Attachment A.....	1142
Chesebrough-Pond's Inc., letter from J. A. Straka, president.....	1133
Commerce, Department of: Letter dated September 10, 1966, replying to questions propounded by committee members.....	1019
Committee on Trade Regulation of the Association of the Bar of the City of New York, statement of.....	1047
Communications Workers of America, letter from Joseph A. Beirne, president.....	1148
Compton Advertising, Inc., letter from Richard H. Hurley, senior vice president.....	1085
Consolidated Orchard Co., letter from Henry W. Miller, Jr., president.....	1124
Consolidated Packaging Corp., letter from A. A. Werner, general manager.....	1132
Consumers Cooperative of Berkeley, Inc., Berkeley, Calif., statement of George Little, president.....	1032
Consumers' Cooperative Society, letter from Val Litton, general manager.....	1108
Consumers League of New Jersey, letter from Susanne P. Zwemer, president.....	1110
Continental Can Co., Inc., letter from Bruce Smart, vice president, marketing and corporate planning.....	1135
Cooperative League of the USA:	
Letter from Shelby Edw. Southard, assistant director, Washington office.....	1112
Statement of Jerry Voorhis, executive director.....	1028
Corn Products Co.: Analysis of H.R. 15440 and S. 985.....	630
Coro, Inc., letter from Edwin J. Oppenheimer, manager, premium sales division.....	1104
Denholtz, A., Long Island Cauliflower Distributors, Inc., letter from.....	1150
Edwards, E. N., Lithonia, Ga., letter from.....	1161
E. I. du Pont de Nemours & Co., Inc., letter from J. P. McAndrews, general sales manager.....	1140
Fairmont Foods Co., letter from P. F. Seiger, financial vice president.....	1123
Federation of Homemakers, letter from Mrs. Gordon B. Desmond, president.....	1154
Fernsworth, Lawrence, Washington, D.C., letter from.....	1159
First National Bank, Dayton, Ohio, letter from Harry Mouer, director.....	1150
Foster & Davies, Inc., letter from M. R. Davies, Jr., president.....	1139

## Additional material supplied for the record by—Continued

Friedman, Prof. Monroe Peter: Reply to J. A. Howard's critique of Eastern Michigan University study.....	Page 1161
General Federation of Women's Clubs, statement of Mrs. E. D. Pearce, president.....	1066
General Mills, Inc., letter from E. W. Rawlings, president.....	1136
Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, statement of Lee W. Minton, international president.....	1066
Greenbelt Consumer Services, Inc., statement of Dorothy S. Wheeler, board member.....	1031
Grey Advertising, Inc., letter from Lawrence Valenstein, chairman, executive committee.....	1087
Group Health Association of America, Inc., letter from W. P. Dearing, M.D., executive director.....	1107
Head, G. W., Dayton, Ohio, letter from.....	1155
Hills Bros. Coffee, Inc., statement of.....	1049
Hobart Manufacturing Co., letter from Kenneth C. Allen, vice president, scale operations.....	1138
Hyde Park Cooperative Society, Inc., letter from Gilbert L. Spencer, general manager.....	1108
Hysan Products Co., letter from Joel Brownstein, vice president.....	1127
Instant Potato Products Association:	
Letter from Raymond D. Jones, president.....	1121
Attachment A.....	1122
International Ladies Garment Workers Union:	
Local 178, letter from Ralph A. Roberts.....	1153
Local 351, letter from Martin A. Rosato, manager.....	1153
Locals 234 and 243, letter from Grace Birkel, manager.....	1153
Interstate and Foreign Commerce Committee:	
Comparison of H. R. 15440 with present provisions of—	
Federal Food, Drug, and Cosmetic Act.....	981
Federal Trade Commission Act.....	983
Meat Inspection Act.....	987
Poultry Products Inspection Act.....	985
Kansas State Chamber of Commerce, letter from C. C. Kilker, executive vice president.....	1113
Kerr Glass Manufacturing Corp., letter from M. R. Kerr, vice president.....	1105
Label Manufacturers National Association, Inc.: Letter dated August 26, 1966, re Federal Food, Drug, and Cosmetic Act provisions regulating labeling, and statistics on percent of income spent for foods in various countries (including Russia).....	757
Laise, James F., Gerradstown, W. Va., letter from.....	1159
Lake Erie Screw Corp., letter from J. C. Wasmer, Jr., president.....	1144
Lefkowitz, Louis J., New York State attorney general, statement of.....	1044
Libby, McNeill & Libby:	
Letter from Robert M. Schaffner, vice president, research and quality standards.....	1106
Letter from K. C. Hardwicke, vice president.....	1106
Liberty Lobby, statement of W. B. Hicks, Jr., executive secretary.....	1080
Lipton, Thomas J., Inc., letter from W. Gardner Barker, president.....	1151
Long Island Agricultural Marketing Association, Inc., letter from Arthur N. Penny, executive secretary.....	1150
Magazine Publishers Association, Inc., statement of John K. Herbert, president.....	1059
Maryland Consumers Council, Inc., letter from W. W. Falck, secretary-treasurer.....	1111
Minnesota Consumers League, St. Paul, Minn., statement of Toby Lapakko, president.....	1033
Minnesota Farmers Union, statement of Edwin Christianson, president.....	1044
National Association of Margarine Manufacturers, statement of S. F. Riepma, president.....	1052
National Association of Social Workers, Inc., letter from Melvin A. Glasser, commissioner on social action.....	1112

# CONTENTS

VII

## Additional material supplied for the record by—Continued

National Association of State Departments of Agriculture, letter from L. H. Bull, secretary.....	Page 1152
National Association of Wholesalers, statement of William C. McCamant, director of public affairs.....	1055
National Conference on Weights and Measures:	
Letter from J. Ellis Bowen, chairman.....	1081
Resolution.....	1082
National Consumers League: "Truth in Packaging," article in Washington (D.C.) Star, July 21, 1966.....	898
National Council of Farmer Cooperatives, letter from Kenneth D. Naden, executive vice president.....	1109
National Council of Senior Citizens, Washington, D.C.:	
Resolution on consumer problems.....	1079
Statement of John W. Edelman, president.....	1078
National Council of Jewish Women, Inc., statement of.....	887
National Farmers Union, statement of Blue A. Carstenson, assistant legislative director.....	1034
National LP-Gas Association, letter from Arthur C. Kreutzer, executive vice president.....	1081
National Milk Producers Federation:	
Letter from E. M. Norton, secretary.....	1119
Proposed amendment.....	1119
National Paper Box Manufacturers Association, Inc., letter from Norman T. Baldwin, executive director.....	1132
National Retail Merchants Association:	
Letter from John C. Hazen, vice president.....	1148
Your money's worth.....	1149
National Rural Electric Cooperative Association:	
Letter from Erma Angevine, women's activities coordinator....	1128
Resolution by official delegates.....	1129
National Small Business Association: Concentration ratios in manufacturing industry, 1958 (table).....	882
Niagara Falls Area Chamber of Commerce, letter from William H. Cummings, president.....	1113
Nichols, Carl W., president, Cunningham & Walsh, Inc., letter from..	1085
Northwest Cannery & Freezers Association:	
Letter from C. R. Tulley, executive vice president.....	1145
Resolution.....	1146
Ohio Valley Baking Co., letter from Philip C. Pierson, president.....	1127
Oil, Chemical & Atomic Workers International Union, letter from Anthony Mazzocchi, director.....	1143
Owens-Illinois, Inc., letter from C. J. Snyder, plant manager.....	1104
Paperboard Packaging Council, letter from Russell C. Flom, president..	1130
Parsons, L. S., general manager, Grocers Baking Co., letter from....	1151
Pennsylvania League for Consumer Protection, statement of James A. Conners, executive director.....	1062
Pennsylvania State Chamber of Commerce, letter from Robert J. Middleton, secretary.....	1115
Peters, F. N., Evanston, Ill., letter from.....	1157
Peterson, Mrs. Esther, Special Assistant to the President for Consumer Affairs:	
Letter dated September 9, 1966.....	1020
State consumer organizations, resolutions on packaging.....	1027
Voluntary organizations with resolutions supporting fair packaging and labeling legislation:	
AFL-CIO.....	1021
AFL-CIO National Auxiliaries.....	1022
American Veterans Committee.....	1023
B'nai B'rith Women.....	1023
Cooperative League of the U.S.A.....	1024
Louisiana AFL-CIO.....	1024
National Association for the Advancement of Colored People.....	1024

**Additional material supplied for the record by—Continued****Pharmaceuticals—Continued****Letter dated September 9, 1966—Continued****Voluntary organizations with resolutions—Continued**

	Page
National Association of Retired Teachers.....	1024
National Conference on Weights and Measures.....	1024
National Council of Senior Citizens.....	1025
National Grange.....	1026
National Rural Electric Cooperative Association.....	1026
Pennsylvania State Council, International Association of Machinists.....	1028
Supreme Ladies' Auxiliary (Knights of St. John).....	1026
UAW International Women's Auxiliaries.....	1026
Letter dated September 16, 1966, re additional organizations submitting resolutions.....	1164
Consumer groups supporting fair packaging and labeling legislation, by States.....	1167
Voluntary organizations submitting resolutions supporting fair packaging and labeling legislation:	
Federation of Citizens Associations of the District of Columbia.....	1164
General Federation of Women's Clubs.....	1165
National Council of Negro Women.....	1166
National Farmers Union.....	1166
National Housewives League of America, Inc.....	1166
Santa Clara Democratic Council.....	1167
Potato Chip Institute International, statement of Harvey F. Noss, executive vice president.....	1050
Premium Advertising Association of America, Inc., letter from William C. Battle, president.....	1089
Pressure Sensitive Tape Council, statement of.....	1067
Processed Apples Institute, Inc., letter from Thomas Rickenback, president.....	1123
Procter & Gamble:	
Illustration depicting increase of number of cartons to achieve standardization.....	677
Letter dated September 2, 1966, re cost analysis to Procter & Gamble of proposed legislation.....	685
Produce Packaging Association, Inc., letter from Robert L. Carey executive director.....	1144
Red & White Corp.:	
Letter from Leo J. Bushey, president.....	1116
Statement of.....	1117
Reed & Prince Manufacturing Co., letter from Daniel B. Richardson, executive vice president.....	1107
R-I-C Products Corp., letter from Vincent W. Adamski, vice president, industrial sales.....	1139
Roller, Ella G., Troy, Mich., statement of.....	1072
San Jose Advertising Club, letter from Mrs. Gertrude B. Murphy, legislative chairman.....	1087
Scullett Foods, letter from F. M. Skelton, manager.....	1115
Silliman, Fred B., Fairfield, Conn., letter from.....	1158
Society of the Plastics Industry, Inc., letter from Wm. T. Cruse, execu- tive vice president.....	1125
South Carolina State Chamber of Commerce, letter from John G. Riddick, administrative manager.....	1115
Staggers, Hon. Harley O., letter dated July 13, 1966, to A. C. Kreutzer, executive vice president.....	1080
Steele, L. T., executive vice president, Benton & Bowles, Inc., letter from.....	1084
Sunbeam Bakeries, letter from A. D. Burton, president.....	1128
Taft Broadcasting Co., letter from L. H. Rogers, president.....	1103
Attachment A—A WKRC editorial, "Are We All Stupid?".....	1103
Taggart, Robert S., Maplewood, N.J., letter from.....	1160



# CONTENTS

IX

## Additional material supplied for the record by—Continued

United Labor Council of Greater Fall River, Mass., letter from Edward F. Doolan, president.....	Page 1148
United States Wholesale Grocers' Association, Inc., letter from Harold O. Smith, Jr., executive vice president.....	1118
Valley Bell Dairy Co., Inc.: Letter from J. William Martin, president.....	1134
Proposed amendment.....	1135
Wade, Wendell W., Western Springs, Ill., letter from.....	1157
Washburn Co., letter from Robert G. Hess, president.....	1139
Washington Teachers' Union, Washington, D.C., statement of.....	1069
Wholesale Stationer's Association, letter from Ralph R. Moser, secretary-treasurer.....	1118
Will's Inc., letter from George F. Will, Jr., president.....	1155
Women's Advertising Club: Letter to Hon. Harley O. Staggers.....	1088
Letter to club members.....	1088
Telegram to Hon. Al Ullman.....	1088
Young & Rubicam, Inc., letter from William J. Coliham, Jr., executive vice president.....	1082



## FAIR PACKAGING AND LABELING

---

WEDNESDAY, AUGUST 24, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Our first witness this morning will be Mr. Daniel S. Ring, counsel for National Paint, Varnish, and Lacquer Association, Inc. Mr. Heimlich was scheduled to appear first but he very graciously said that it was necessary to get some of these others on their way and he would stand aside until tomorrow. So you can proceed.

### STATEMENT OF DANIEL S. RING, GENERAL COUNSEL, NATIONAL PAINT, VARNISH, AND LACQUER ASSOCIATION, INC.

Mr. RING. Mr. Chairman, I will try to curb my innate verbosity to the point where I will expedite this hearing.

The CHAIRMAN. Fine. We do not want to cut you off, as you know, but we do appreciate brevity as much as possible.

Mr. RING. Yes, sir.

I have also filed a statement and I know that you and the members of your committee have been very diligent reading the statements filed, so I will not go into it in detail.

The CHAIRMAN. Fine.

Mr. RING. What I am here for primarily is to express the hope that the committee and the House will adopt toward paint, varnish, lacquer, and allied products the same attitude that was adopted in the Senate.

Originally we were given assurances that what was being striven for was a bill to protect the housewife in shopping in supermarkets and that the market basket items were those which primarily were the subject of interest of this bill.

We were very much surprised to learn that on the floor of the Senate, Senator Cotton presented an amendment to S. 985 in which he asked that paints, varnishes, lacquers, and allied products be included in the bill. This was beaten by the Senate on a rollcall vote by something like 69 to 7 and therefore we do have a legislative history indicating that these products are products that are not classified in the consumer category.

I have also read the bill that is now under discussion and my only wonder is whether or not it is sufficiently clear that paints, varnishes,

and lacquers are excluded. Accordingly, I would suggest, with all due respect to the committee, that a clarification of the definition be inserted in the bill whereby paints, varnishes, and lacquers would be placed in the same category as the other items that the bill does not intend to cover.

The CHAIRMAN. Does the Senate bill cover that?

Mr. RING. No, the Senate bill does not cover it except for the vote that was on the floor, except for the statement by Senator Hart and except for the statement by Senator Magnuson which was to the effect the Senate provisions did not intend to include paint products.

But when lawyers go and look at the law at a later time and don't see it right in the law, they wonder whether or not there is some possibility of arguing.

Now I will just summarize what I want to say as follows: We wish to suggest respectfully to the committee that either the bill itself or the report accompanying the bill carefully define the paint products which are not intended to be included. That can very well be done by a reference to the standard industrial classification of the Department of Commerce, Bureau of the Census, in the census of manufacturers, section 2851, which has two pages of paint products that are defined for purpose of taking statistics. If, therefore, your committee feels that paints should be excluded (just as the Senate has felt), a reference to that section of the standard industrial classification of the Bureau of the Census would accomplish the purpose, I have submitted, together with my statement, a tabulation from the Bureau of the Census containing table No. 6, which outlines them all, but I don't think you have to run two pages of the bill to say it. All you have to do is refer to the standard industrial classification.

The CHAIRMAN. Your whole statement will be included in the record.

Mr. RING. We have already voluntary standards for the sizes of paint cans and for the number of colors, as a matter of fact, that go into it.

I don't want to stop without expressing as a citizen my deep appreciation for the diligence and effort that is made by you and your committee to get all views and all aspects of this act covered. I wish all of your constituents could see you, yours and everybody else's, see how hard you work at the public interest here. I am very much impressed and edified by it and I thank you very much for the opportunity of appearing.

The CHAIRMAN. Thank you so much for your kind words, Mr. Ring. We always try to do what we think is best.

Mr. RING. Thank you.

(Mr. Ring's prepared statement follows:)

**STATEMENT IN BEHALF OF NATIONAL PAINT, VARNISH AND LACQUER ASSOCIATION, INC., SUBMITTED BY DANIEL S. RING, GENERAL COUNSEL**

The National Paint, Varnish and Lacquer Association is a trade association representing the manufacturers of vast preponderance of paints, varnishes, lacquers, and allied products made in the United States.

For more than three decades, this Association has devoted its efforts to the same objectives that are outlined in H.R. 15440 and S. 985, namely, the protection of the public. Long before there were requirements for labeling hazardous sub-

stances so as to protect the users of its members' products from harm, this Association recommended specific labels and precautionary information to be placed upon containers of its members products. It was in the forefront of the supporters of the Federal Hazardous Substances Labeling Act and now enjoys a position of distinction in cooperation and voluntary compliance with that Act as administered by the Food and Drug Administration. The Recommended Labels for hazardous products issued by our Association in 1962 for compliance with the salient features of the Federal Hazardous Substances Labeling Act were made available to and distributed broadly by enforcement officials of the Food and Drug Administration as models which should be followed with respect to the labeling of paint and kindred products.

To enable members to know the laws with respect to labeling requirements for our industry, a 634 page book outlining the paint labeling laws and regulations of the Federal Government as well as all states, including weights and measures, formula labeling and special acts was compiled by our Association and made available to all members. These are but two examples of many similar projects and are reported to you so that you may know that our Association is in full sympathy with any procedures which will promote truth in advertising and packaging.

Before entering into a discussion of H.R. 15440, or its counterpart, S. 985, which has already been passed by the Senate and transmitted to the House for action, attention should be focused on the difficulty of putting into words the precise meaning of provisions of law in economic matters. This was probably best recognized by Professor Paul A. Samuelson of the Massachusetts Institute of Technology, one of the leading economic advisors to the White House during recent years, in his book, "Economics" (Third Edition, McGraw-Hill, 1955). He discusses the problem above outlined under the subtitle, "The Tyranny of Words", on page 7 of that volume as follows:

"Peculiarly in a field where such an everyday concept as 'capital' may have ten or more different meanings, we must watch out for the 'tyranny of words.' The world is complicated enough without introducing further confusions and ambiguities because (1) two different names are unknowingly being used for the same thing, or because (2) the same one word is being applied to two quite different phenomena. Jones may call Robinson a liar for holding that the cause of depression is oversaving, saying, 'Underconsumption is really the cause.' Schwartz may enter the argument with the assertion, 'You are both wrong. The real trouble is underinvestment.' They may continue to argue all night; but really if they stopped to analyze their language, they might find that there were absolutely no differences in their opinions about the real facts and that only a verbal confusion was involved."

Recognizing, therefore, that it is generally difficult, and often impossible, to find the precise words to define coverage of a Bill, our Association in 1963, when the Hart Bill prototype of the current measure was first presented to the Senate, made a careful study of its philosophy and provisions. This study indicated that the provisions of that Bill were directed toward protection of the consumer of packaged products which a housewife picks up frequently in the supermarket and which are consumed by use in the home in a relatively short time. We perceive no substantial change in the philosophy or provisions of H.R. 15440 or S. 985.

In its August 4, 1964 Report on "Truth in Packaging," Senator Hart's Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee made clear it was aiming at "market basket" items. (p. 13)

Our Association, however, is interested in other than market basket items, namely paints and allied products as they are defined and listed in the 1963 Census of Manufacturers under the Standard Industrial Classification Code No. 2851. So that you may know precisely the products we are referring to, a copy of that Classification, compiled by the Census Bureau, is presented herewith. Special attention is invited to Table 6A at Page 28E-9 setting out the paint industry's product analysis.

We agree with the position taken in the Senate both in 1963 and 1966 with respect to limiting the coverage of the Act to "market basket" items. We believe that inclusion in the Bill's coverage of articles of more durable nature will produce confusion and overlapping of administrative activities.

On pages 13 and 14 of Senator Hart's Subcommittee report above mentioned, the majority view on "Scope and Coverage" of the Hart Bill (S. 383 of the 88th

Congress) included not only a list of items to which the Bill was intended to apply, but also a list of items to which the Bill was not intended to apply. The report stated, (P. 13) :

"The bill is concerned with three general categories of what are commonly called *market basket items*." [Emphasis supplied.]

The first of these covered categories includes foods, drugs, devices and cosmetics, as defined by the Federal Food, Drug and Cosmetic Act. The second category includes those commodities "customarily produced or distributed for sale in retail outlets for consumption by individuals, or use by individuals for purposes of personal care and which usually are consumed or used up as a result of such consumption by individuals or use by individuals in the performance of services usually performed within the household and which are usually consumed or expended in the course of such consumption or use." The third category is referred to as "kitchen and bathroom" items, but the Bill also extends to products for use for performing other services in the household.

On page 14 there follows a list of articles which are *not* intended to be covered such as household and home furnishings, bottled gas for heating, flowers, plants, seeds or shrubs, fountain pens and kindred products. Included specifically in that list was a reference to the type of products manufactured by our members as follows :

"\* \* \* any article or commodity intended for use for the preservation, adornment, maintenance, repair, reconstruction, or replacement of the exterior or interior of any structure or any part thereof or for use in the maintenance, repair, adornment, or renovation of any article or commodity."

It can be seen by reference to Table 6A in the attached 1963 Bureau of Census report that "paint and allied products" as referred to in the Table come within the category immediately above quoted as not intended to be covered by the Act. The scope of the Act recommended in the 1964 Report was not, insofar as we can see, changed substantially in 1966. When Senator Magnuson spoke on S. 985, he made the following statement in the Congressional Record of June 2, 1966, at Page 11504 :

"The bill is not intended to cover durable articles or commodities ; textiles or items of apparel ; any household appliance, equipment of furnishings, including feather and down-filled products, synthetic-filled bed pillows, mattress pads and patchwork quilts, comforters and decorative curtains ; bottled gas for heating or cooking purposes ; *paints and kindred products* ; flowers, fertilizer and fertilizer materials ; plants or shrubs, garden and lawn supplies ; pet care supplies ; stationery and writing supplies, gift wraps, fountain pens, mechanical pencils, and kindred products. The bill also excludes such commodities as meat, poultry ; tobacco ; pesticides ; alcoholic beverages, prescription drugs and seeds, which are already subject to Federal regulation." (Emphasis supplied)

The question may be asked as to why, if our industry is in complete sympathy with promotion of truth in packaging and advertising, it seeks to exclude its products from coverage. The answer is that probably no industry is as free as ours from cases involving deception of the public, misbranding or mislabeling products. The existing laws and regulations applicable to the products of our industry, as administered by the Federal Trade Commission and the Food and Drug Administration, are well understood by our members and have been subject of volumes of advisory opinions that have been sent to our members by our Legal Division. Inquiry at the Federal Trade Commission or at the Food and Drug Administration enforcement offices will verify the fact that our industry as a whole has been singularly free from any widespread deviation from the principles which this Bill is intended to protect. In short, the products of this industry are sufficiently regulated by existing laws. Voluntary industry compliance with such laws obviates the need for additional legislative proscriptions.

In the area of weights and measures, the National Paint, Varnish and Lacquer Association has for years been a member of the National Conference on Weights and Measures which has done such splendid work under the sponsorship of the Bureau of Standards of the Department of Commerce to bring about uniformity of labeling among the various states, which have the right to prescribe weights and measures laws and regulations so long as the Federal Government itself has not acted in this area. Our industry is most interested in uniformity of labeling and regulation. It may be noted also that with the voluntary cooperation of industry, and with but few exceptions, under the influence of the Weights and Measures Section of the U.S. Bureau of Standards, all state and regional areas

in the country require weights and measures labeling which is in substantial uniformity with the standards recommended by the National Conference on Weights and Measures. Further, we have long had standard size containers for paints under the Simplified Practice Recommendation R144-60 issued by the Department of Commerce.

We wish to protect our industry from confusion that may accompany additional regulation.

It is respectfully suggested, therefore, that either in the Bill itself or in the Report accompanying the Bill, a careful delineation be made between the products which the House wishes to be covered by the Bill and those products which it does not intend to cover. Bearing in mind the difficulty in phrasing the provisions so as to express the precise intent of the House and of its Committee, it may well be that it is impossible to write the precise definition of those products covered and those products exempted into the Bill itself and that it may be necessary to devote a portion of your report to a statement of the intent of the legislature in this regard.

We believe that coverage in the Bill of the products of our industry as above described would run contrary to the logical procedure set up in the Senate which makes a clear distinction between "market basket items" and those items which, in the true sense of the word, are durables. Paint and allied products are not bought by the housewife week-by-week, or even month-by-month, and cannot, by any stretch of the imagination, be classified as "market basket items." The paint that comes home in a can is applied to a surface which it is expected to protect, beautify and adorn for years to come. Paint becomes integrated with the house itself or its appurtenances and appliances through application to the surfaces for which it is made.

For the above reasons, it is requested that paint and allied products as defined by the Census Bureau and as voted by the Senate during the course of debate on amendments, be clearly shown to be excluded from coverage by the subject Bill, either by precise definition in the Bill itself or by a statement in the Committee Report accompanying it.

The CHAIRMAN. Our next witness is Mr. Aaron S. Yohalem, senior vice president of Corn Products Co.

**STATEMENT OF AARON S. YOHALEM, SENIOR VICE PRESIDENT,  
CORN PRODUCTS CO.**

Mr. YOHALEM. Thank you, Mr. Chairman.

The CHAIRMAN. You may proceed as you see fit and we hope that if you wish to present a long statement you will put it in the record and summarize it.

Mr. YOHALEM. Thank you. I believe that my statement will not take over 15 minutes, sir, and I will be submitting the balance of my statement.

My name is Aaron S. Yohalem. I am a senior vice president of Corn Products Co., a food processor with plants in 14 States. We manufacture and market in this country such longtime household favorites as Hellmann's-Best Foods mayonnaise, Skippy peanut butter, Mazola and Nucoa margarines, Mazola corn oil, Karo sirups, as well as other leading packaged grocery and household products.

Because of our interests, we have made continuing studies of the proposed legislation for regulating packaging and labeling. Such studies included not only H.R. 15440 and S. 985, but also the proposals of prior years. As a result, we have definite views on the legislation now before this committee and we appreciate the opportunity to present them. I have prepared a memorandum of specific comments on the proposals, section by section. But in the interest of time, I shall not review the points made in the memorandum. Rather I shall file it with you herewith in the hope that you may find it helpful.

(The data submitted follow:)

**ANALYSIS OF H.R. 15440 AND S. 985, APPENDIX TO TESTIMONY OF AARON S. YORHALEM, SENIOR VICE PRESIDENT, CORN PRODUCTS CO.**

The following analysis of H.R. 15440 and S. 985 pending before this Committee reveals that they are objectionably vague and ambiguous Bills, and that if fraud and deception are the issues, then the intended effects can be accomplished by the enforcement of existing legislation.

This memorandum also points out the more striking shortcomings of these Bills. Since H.R. 15440 and S. 985 are identical in very many respects, most of the references below are to "the Bills"; where a comment pertains to only one of the two bills, reference is made to the specific bill by number.\*

**1. DECLARATION OF POLICY (SECTION 2)**

This language has no substantive effect; however, the stated goal that labels and packages "should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate price comparisons" would undoubtedly be considered as a general guideline by the FDA and FTC in promulgating regulations under the Bills, since no specific criteria for such regulations are established. The facilitation of price comparisons might be said to call into question every aspect of the *value* of a commodity, i.e., every attribute of the product, its ingredients, its processing, its packaging, etc.

It seems wholly wrong for the Bills to include such a broad and unqualified declaration of policy, which provides a means whereby regulations may be promulgated which go beyond what appears to be intended by the Bills.

**2. REQUIREMENTS APPLICABLE TO ALL COMMODITIES**

Section 4(a) of the Bills directs the enforcement agencies to adopt a series of regulations that would be applicable to all commodities under their jurisdiction. Once adopted, these regulations would have the force and effect of law.

First, it should be noted that all of the regulatory safeguards which Section 4(a) is intended to effectuate are already adequately accomplished by existing legislation—notably, the Federal Food, Drug and Cosmetic Act (21 USC 301 et seq.) and the Federal Trade Commission Act (15 USC 41 et seq.). Enforcement of these and related statutes would provide adequate protection of the consumer interests involved.

The Bills do not contain adequate criteria or guidelines for establishment of these regulations. Such regulations could easily go far beyond the intended scope of Section 4(a); examples of particular instances are set forth below in the discussion of the particular subsections. Further, it is suggested that insofar as most of the matters covered by Section 4(a) are concerned, implementation by agency rule-making procedures is an unnecessary, cumbersome, expensive and time-consuming approach. Accordingly one should review Section 4(a) with the question in mind: "Why must these provisions be implemented by regulations?"

**(a) Identity of the commodity and the manufacturer, packer or distributor**

Regulations under Section 4(a)(1) would require that a commodity bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer or distributor. Similar requirements already exist in federal legislation with respect to foods, drugs and cosmetics. Most other consumer commodity labels include such information pursuant to the Model State Weights and Measures legislation recommended by the U.S. Department of Commerce and adopted by more than 20 states. Commodities now labeled in compliance with such federal and state legislation already provide the information referred to in this provision.

There is therefore no reason why Section 4(a)(1) is required, and particularly there is no reason why it should be implemented by agency rule-making; the latter might result in regulations which go beyond the type and degree of information which the language of the Bills suggests, such as requirement of state-

\*Testimony before the Senate Commerce Committee on S. 985 and similar Bills was directed to the principal provisions of practically all the other Bills now before the House Committee—and therefore specific references to those other Bills will not be made herein.



ment of plant location, street address, and other information which is useless to consumers and merely a burden to manufacturers in the preparation of labels.

*(b) Separate statement of net contents*

Regulations under Section 4(a) (2) would require a separate accurate statement of the quantity of contents "in a uniform location upon the principal display panel of the label."

It is not clear whether the "uniform location" provision means uniform for each individual product, each general product class, each container class (square package face, cylindrical package, bag, etc.), or each packaging material class (glass, can, paper, bag, etc.). The language "uniform location" is unduly vague, and should be deleted. Further, there is no reason for implementation of the other aspects of this provision by agency rule-making.

*(c) All-ounce declaration*

Regulations under Section 4(a) (3) (A) would require that the net contents of packages containing less than 4 pounds or 1 gallon be expressed in ounces or in whole units of pounds, pints, or quarts. This requirement conflicts directly with the requirements of many State laws, and with the requirements of the Federal Food, Drug and Cosmetic Act as interpreted by the FDA. The apparent intention of the Bills is to facilitate comparison of package quantities. However, it appears that this interest has been allowed to obscure other interests of the consumer, rather than being placed in a balance with such other interests. For example, FDA regulations currently prohibit "all-ounce" declarations such as "33 fl. oz." on the apparent ground that it exaggerates the quantity of the contents to use the larger number "33" rather than the smaller numbers of the declaration "1 qt. 1 fl. oz." It is inconsistent and illogical that a labeling practice which has been, and is, considered unlawful, will henceforth be not merely permitted but in fact *mandatory*. The eagerness to facilitate comparison of package quantities should not be allowed to obscure all other interests.

In any event, consider why this sort of provision need be implemented by agency rule-making; there is no apparent reason.

*(d) Legibility and contrast*

Regulations under Section 4(a) (3) (B) would require that the contents declaration appear in conspicuous and easily legible type contrasting with other label matter. It is not clear what specific regulations would be adopted to carry out this provision, beyond the general requirement. A similar requirement already exists in the Model State legislation and in the Federal Food, Drug and Cosmetic Act.

We assume that the word "topography" in this subsection of H.R. 15440 is a misprint for "typography."

*(e) Type size*

Regulations under Section 4(a) (3) (C) would establish type-size requirements for the contents declaration which would have to be uniform for all packages of substantially the same size. A number of States have adopted uniform type-size scales, pursuant to the Model State legislation recommended by the U.S. Department of Commerce. There is nothing in the Bills that would prevent the federal agencies from adopting different type-size requirements, which would accordingly be unnecessarily burdensome and expensive.

Section 4(a) (3) (C) of the Bills appears to contain two criteria for type size in quantity declarations—i.e., "principal display panel" area and "package" size. State requirements under the Model State legislation have been based only upon the first of the two. At best, this Section is ambiguous.

*(f) Parallel to the base*

Section 4(a) (3) (D) calls for regulations requiring that the contents declaration be generally parallel to the base of the package; this requirement is similar to that established pursuant to the Model State legislation.

Moreover, it appears that this subsection adds nothing whatsoever to the provisions of Subsection 4(a) (2) with respect to the establishment of "uniform locations" for quantity declarations, and is thus redundant.

### 3. QUALIFYING WORDS

Section 4(b) contains a direct prohibition of any qualifying words or phrases in conjunction with the net quantity statement. This provision would cause un-

certainty, for it is not clear what words are intended to be considered to be a part of the quantity declaration.

For instance, Section 4(b) might prohibit quantity declarations in the respective metric equivalent immediately following the avoirdupois or fluid ounce declaration, a course that has been recommended as an educational step to facilitate a possible future change to the metric system of weights and measures. Also, FDA regulations now permit, under certain conditions, the quantity declaration to be modified by "minimum weight" or "average weight"; the Bills would appear to prohibit this practice as well.

Section 4(b) (being an absolute prohibition) goes beyond the Model State legislation, which establishes prohibitions against qualifying words that tend to exaggerate the amount of the commodity in the package.

#### 4. ADDITIONAL REGULATIONS FOR PARTICULAR COMMODITIES

Section 5(c) of the Bills provides that additional regulations may be promulgated with respect to "any commodity" when the agency determines that such regulations are necessary "to prevent the deception of consumers or to facilitate price comparisons." As noted above in connection with the Bills' declaration of policy, the price comparison test may be considered by the agencies (and perhaps by reviewing Courts) to be a guideline for the determination of the scope of the rule-making powers delegated by the Bills. Almost any regulation could be justified as facilitating price comparisons. Rule-making could result which goes far beyond what Congress intends by these Bills.

The absence of any statutory criteria or guidelines for agency rule-making is a particularly objectionable characteristic of Section 5(c). There is no safeguard against excessive agency action in this area, since no rule-making criteria are provided in the Bills as a basis for efficient conduct of agency hearings and meaningful judicial review. Section 5(f) and 5(g) represent a step in the right direction in establishing certain criteria for regulations; however, these are applicable only to package size regulations under Section 5(d).

Section 5(c) provides for regulations with respect to "any commodity." It is not at all clear how narrow or broad a category is intended. For example, is laundry starch "any commodity", or do the several forms in which it is sold (aerosol spray starch, liquid starch and the traditional box of dry starch) each represent a single commodity? Since each of the three forms represents unique packaging characteristics, it is submitted that no Section 5(c) regulation need be broader than one of the three forms. The Bills are vague and ambiguous in this respect. The same criticism is applicable to Section 5(d), which also provides for regulations for "any consumer commodity."

##### (a) *Standards for characterizing package sizes*

Regulations under Section 5(c) (1) would establish and define standards for characterizing the size of a package, such as "large," "medium," "small," "economy size," etc. These standards would apparently characterize package sizes in terms of the number of ounces, etc., which each size may contain. It is not clear whether the sponsors of the Bills intend that the regulations should specify a range of quantities which would qualify for each specific size designation, so that every package would qualify for *some* size designation, or whether they intend that regulations should specify a single quantity for each size designation so that a package falling between two such quantity figures could not use *any* size designation at all. The Bills are ambiguous in this respect.

Although Section 4(b) appears to permit "supplemental statements" about package size (provided they are not adjacent to the quantity declaration and are not deceptive), Section 5(c) (1) might as a practical matter do away with many or most supplemental statements that Section 4(b) appears to allow.

##### (b) *Serving sizes*

Regulations under Section 5(c) (2) would establish the quantity of a particular product which shall constitute a serving.

This provision is ambiguous in that it is not expressly limited to foods, although presumably the sponsors of the Bills did not intend any broader coverage, nor indeed would any broader coverage be practical.

##### (c) *Regulation of "cents-off" and "economy size," etc.*

Under Section 5(c) (3) the agencies could adopt regulations relating to "cents-off" or "economy size" label statements. There are no statutory criteria for such regulations except for those implied by the introductory language in Section 5(c)

(to prevent deception or to facilitate price comparisons). This provision is unusually objectionable in that it could be construed to authorize the agencies to go beyond the establishment of guidelines for use of these label statements and to authorize prohibition of these practices which are instrumental in conducting worthwhile promotions and passing savings on to consumers.

*(d) Ingredient information*

Regulations could be adopted under Section 5(c)(4) to require that information with respect to the ingredients of a commodity be placed on the package. This provision is most objectionable in that the agencies might interpret this as a mandate to require the disclosure of such an array of detailed information about ingredients that the consumer's attention could readily be diverted from the most important factors—care and quality in selection of ingredients, formulation, manufacturing and packaging, and the convenience, flavor and other product characteristics which appeal to consumers.

Though the Bill provides that these regulations are to be "consistent" with the Federal Food, Drug and Cosmetic Act requirements, this limitation might be construed only as a prohibition of direct conflict with the Federal Food, Drug and Cosmetic Act requirements and not as a prohibition of regulations which go much further along a given regulatory avenue than the analogous Federal Food, Drug and Cosmetic Act requirement.

S. 985 contains an amendment<sup>1</sup> to this provision adopted on the Senate floor, which precludes application of this subsection to foods for which standards of identity have been promulgated pursuant to the Federal Food, Drug and Cosmetic Act. It is not entirely clear whether, if FDA promulgates a standard of identity for a particular food after a Section 5(c)(4) regulation is in effect, the promulgation of that standard would automatically repeal any Section 5(c)(4) regulation.

Section 5(c)(4) may be the most far reaching and objectionable provision in the Bills. It would lead to "numbers games" in many products where the mere fact of a higher percentage of an ingredient does not assure superior quality of the product; on the contrary, this might be completely misleading to the consumer.

(e) H.R. 15440 contains an additional provision in this category, i.e., regulation of shapes and proportions of packages. The Senate wisely rejected this provision in the consideration of S. 985. Such a provision could only lead to "licensing" and to complete regimentation of packaging practices, which would be detrimental to the interests of both industry and consumers. (See Senate Testimony)

#### 5. PACKAGE SIZE STANDARDS

(a) Section 5(d) contains a complex procedure for the establishment of quantities in which particular commodities would be permitted to be packaged. Much of what this objectionable provision is directed at is already accomplished by the Bills in the "all ounce" quantity declaration provision, which purports to facilitate comparison of the quantities of contents of various packages of the same commodity. Also, this subsection 5(d) purports to include a voluntary procedure, which in fact is voluntary in only a very limited sense, if at all. A number of questions remain concerning the interpretation and application of these procedures.

(b) The procedure would begin with a determination by FDA or FTC that the weights or quantities in which a particular consumer commodity is being distributed "are likely to impair the ability of consumers to make price per unit comparisons." This determination could be made only after a hearing in accordance with Section 7 of the Administrative Procedure Act. This probably means that the determination would have to be based upon substantial evidence in the hearing record, but this is not made clear. Judicial review would theoretically be available for such determination; however, it is not clear what persons, and in what circumstances, would be entitled to judicial review, since it is difficult to say whether anyone is "adversely affected" or "aggrieved" in the sense of Section 8 of the Administrative Procedure Act by such a preliminary "determination."

Sections 6(a) and 6(b) of the Bills require substantial evidence of record and judicial review where "regulations" are being promulgated. However, this

<sup>1</sup> This amendment has not been carried over to H.R. 15440.

initial step regarding need for a Section 5(d) regulation is identified in the Bill as a "determination," whereas other agency actions are referred to as "regulations." It might be argued therefore that a "determination" is not a "regulation," and is thus not subject to these procedural safeguards. Under this construction, the finding of need for a Section 5(d) regulation is left virtually to the whim of the agency.

(c) The determination of need for a Section 5(d) regulation would be published in the *Federal Register*. Thereafter, any producer or distributor affected could request the Secretary of Commerce to develop a "voluntary" package size standard for the commodity.<sup>2</sup> The procedure for the promulgation of the voluntary standard would be governed by Commerce Department regulations now in effect, which provide that any standard must be recommended by a committee composed of manufacturers, distributors and consumers.

However, where a voluntary standard is so requested, and appears to be forthcoming, there is no provision in the Bills which would preclude FDA or FTC from continuing their own proceedings to adopt mandatory package size regulations (although, of course, their findings would ultimately be governed by any timely action of the Commerce Department). The lack of a mechanism for the stay of FTC/FDA proceedings under Section 5(d) (2) of the Bills while the Commerce Department goes through the procedures for "voluntary" standards could easily cause enormous waste and duplication. An industry member might have to conduct two proceedings at once—one before FTC/FDA and the other before Commerce. If the FTC/FDA order issued first, it would be effective until the Commerce "voluntary" standard issued (if any did issue); the manufacturer would have to change packages to comply with the FDA/FTC order in spite of the fact that proceedings were simultaneously pending which could supersede the terms of the FDA/FTC order.

(d) Also, there is really very little that is "voluntary" about the so-called "voluntary standards." It appears that once one starts the Commerce Department mechanism in motion by requesting a standard and submitting a draft of the proposed standard, the Commerce Department can amend the proposal as comments from industry, consumers, etc. may indicate, and the Commerce Department can then adopt the revised proposal. In other words, the *initiation* of the Commerce Department procedures is voluntary, but thereafter the Commerce Department does not appear to be bound by the precise proposal the industry member submitted and can apparently promulgate a standard which differs vastly from the proposal. In the past, this has not constituted an objection to Commerce Department Standards because no one has been bound by these standards. However, under the proposed legislation the "voluntary" standard is for all practical purposes *mandatory* since it has the effect of amending any FDA/FTC regulations which then exist or which later come into existence, and which are, of course, mandatory. Moreover, even if the Commerce Department does not revise the industry proposal, the consumer representatives who comprise one third of the committee can veto any proposed voluntary standard (since a three-fourths vote of the committee is necessary to the issuance of a Commerce standard), and force the matter into FDA/FTC rule-making leading to a mandatory standard. Thus, it cannot be said that industry has the option of electing voluntary standards in lieu of mandatory standards.

Furthermore, there is no provision for procedural safeguards or judicial review in the Commerce Department proceedings, other than the minimal requirement of Section 10 of the Administrative Procedure Act that a Court can set aside almost any agency action if it is arbitrary, capricious, abusive of discretion, violative of constitutional due process, or in excess of the statutory mandate. This, however, falls far short of a judicially reviewable requirement that the agency action be supported by substantial evidence of record at a hearing.

(e) It is also unclear what the amending powers of the Department of Commerce would be. If a voluntary standard were put in effect within the period specified in the Bills, and thus governed or superseded FDA/FTC regulations then or later in effect, what would be the effect on the latter if the Commerce Department amended the voluntary standard several years later? Would the Commerce amendment automatically amend the FDA/FTC standards, even though the Commerce amendment was adopted after the expiration of the time periods specified in Section 5(f) (1) (A), (B) and (C)? Could such an amend-

<sup>2</sup> It is not clear why a "distributor" should have any voice in this matter.

ment be made by the Commerce Department on its own motion, without any application by the person who initiated the original "voluntary standard?" The Bills do not seem to answer these questions, which are important questions in view of the lack of procedural safeguards in the proceedings of the Commerce Department.

(f) The possible effects of the voluntary standard upon the right to judicial review of FDA/FTC package size regulations should also be noted. In effect, the Bills provide that an FDA/FTC regulation will be vacated by an appellate court if not supported by substantial evidence of record. However, suppose that if after the FDA/FTC hearings has been held, the substantial evidence of record supports package sizes of 4, 8, 16, and 32 ounces, but that a Commerce Department standard is then in effect (or comes into effect within the period specified in the Bills) specifying the proper sizes as 6, 12, 18 and 36 ounces, a range of sizes for which there is not substantial evidence of record at the FDA/FTC hearing. It seems that FDA/FTC has no choice but to publish as its regulation the Commerce Department standard, even though not supported by substantial evidence of record. On the other hand, perhaps the Commerce Department standard itself might be argued to constitute substantial evidence of the propriety of its terms. Either interpretation casts doubt upon the availability, and practical value, of judicial review of Section 5(d) regulations.

(g) Section 5(f) contains certain further limitations on the authority of the FDA and the FTC to standardize sizes pursuant to Section 5(d). No regulation could establish any size which is less than 2 ounces. This provision is apparently intended to leave the 1½ ounce candy bar, for example, alone; however, it is not at all clear that it does so. To provide that no regulation can "establish" any size less than 2 ounces is not to provide that no regulation can prohibit or otherwise affect any size under 2 ounces. Also Section 5(f) provides that no Section 5(d) regulation can preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities, except to the extent that the continued use of such package is likely to deceive consumers. It may be questioned whether this represents any practical limitation at all, since it is subject to consideration of "deception," and the agency might well determine that consumers are likely to be deceived by the fractional ounces that result from the use of the same container for products of varying densities. Also, because of the phrase "customarily used," this limitation is probably of no value whatsoever with respect to new products or new packages for established products.

Subsections 5(f) (3) and (4) are extremely objectionable in that they provide that no Section 5(d) regulation shall affect "dimensions" of packages in certain circumstances. This suggests that Section 5(d) regulations *can* affect package dimensions in *other* circumstances, which simply is not so and was not intended. Apparently, the word "weights" should have been employed in Sections 5(f) (3) and (4) in lieu of "dimensions."

(h) Section 5(g) sets forth several factors as to which "due regard shall be given to the probable effect" of any regulation adopted under Section 5(d).<sup>4</sup> It is by no means clear that this provision is an effective limitation on the enforcement agency's authority. The agency would of course recite that it has given due regard to these factors, and a court upon judicial review might be hard put to hold due regard was not given to any one of them. By "due regard," one infers that the agency is only obligated to listen to evidence of these factors; i.e., they are made "relevant," but not accorded any particular weight.

(i) It should be noted that no procedure is established for amendment of these Section 5(d) package size standards as technology and consumer tastes change. A company wishing to use a new size container (i.e., to secure an amendment to an existing FDA/FTC regulation) might well have to seek approval first from the Department of Commerce under its procedures and then from the agency which had adopted the mandatory regulation. At this second stage the agency might not be *obliged* to adopt the Department of Commerce amendment, even though it became a part of the voluntary standard, for the Bill provides only that the compulsory regulations shall not vary from the voluntary standards "in effect" within the 12/18-month period after the initial determination by the agency. However, on the other hand, it seems fairly clear that FDA/FTC

<sup>4</sup> An amendment to S. 985 on the Senate floor added "cost to consumers" to this list of factors. H.R. 15440 does not retain this amendment, which is certainly an amendment which would further the interests of consumers.

belief among the public that this legislation will lower food costs, yet this hope will not be realized. On the contrary, we are convinced the consumers' food dollar will buy less product value and performance.

On the first point, the bill's effect on our competitive system, this effect will be harmful not only to consumers, but also to the businesses that serve them—and I refer to small food companies as well as large, established processors like my own, Corn Products Co. How! The effect of this legislation—under the name of facilitating price comparisons—will be to subordinate every manifestation of competition except price.

Price, of course, is an important element in competition to win a share of the consumer's business, we must offer our products at competitive prices.

Price, however, is just the beginning. Success under the prod of our competitive system demands a constant search for an element of distinction. We may find it in our research laboratories. It may be a better flavor, more convenient use. It can be an entirely new product, one that nobody else has—yet. We may find our distinction in our processing—in a better way of doing things. We may find our distinction in a more appealing package, one that stores more conveniently, one that opens more easily or has a secondary use. Competition forces this search for distinction that makes our system work. The search is open to all comers, big organizations, small businesses, or the individual with a good idea. They all can compete for success in an arena that encompasses factors far beyond price alone.

Under the proposed legislation, would Corn Products Co. have spent more than \$400,000 to develop and integrate into our production facilities a new easier-to-grip container for salad oil? We did so recently. And surveys showed that housewives prefer this innovation 3 to 1 over our former, conventional container. What happens to the incentive to do this if one must undertake administrative hearings to obtain permission for new designs, sizes, and shapes of containers? By the time the hearings are completed, with the attendant broadcasting of our ideas, all competitive advantage would have been lost—the traditional benefits of being first would be lost.

To the extent that the proposed legislation hampers or dampens the vital competitive stimulus to innovation, to that extent will it jeopardize a system that has provided American consumers with the highest quality and widest choice of foods at the lowest net cost in the world—foods more readily available and more conveniently prepared and packaged than anyone 50 years ago could have imagined as possible.

It is no exaggeration to say that this legislation will discourage research—will inhibit the search for excellence—will erode the value of brand and reputation built out of performance and years of hard work. I say this because once the reward for such effort is removed, the effort itself will diminish.

Now let us turn to another phase of the proposed legislation, fraud and deception. In discussing this, I would like to point out that Corn Products Co. is not only a major food processor in this country, it is also the largest American-based food company in operations abroad—with processing plants in 30 countries. This has given us first-hand experience in building successful businesses under a wide range of

economic policies and regulations. As a result, we can bring a broad and practical perspective to a discussion of regulations that work best—not merely for us, but for all participants in the marketplace, from grower to consumer. And I can say categorically the best regulations are those designed to prevent fraud and deception, to safeguard health, and to further the openness of the marketplace.

This bill does not do this. Its language, as I have detailed in the memorandum I am leaving with you, is sweeping, vague and loose. But more important, its underlying concept is to give regulatory agencies the power virtually to enact point-by-point, detail-by-detail behavior concerning what we shall do—not what we shall not do. This is the most deadening form of regulation that can be applied. It becomes, in essence, a form of licensing—the licensing of change.

Let me make absolutely clear, sir, that we favor any and all regulations that serve the real interests of consumers.

For instance, we support the full and effective enforcement of the laws against fraud and deception that are now on the books. If they need strengthening we would favor making them more effective. We actively support legislation such as the model State regulation on uniform weights and measures.

But we submit that careful analysis of this proposed legislation now before you—and a comparison with legislation already on the statute books—reveals clearly that this legislation does not advance the consumers' protection from fraud or deception. The fact that the food industry is already a highly regulated industry in our country should not—and does not—keep us from considering the need for new regulation on its merits. But the merits of the legislation proposed here do not stand up under scrutiny.

We also submit that by attempting to legislate economic law—which is what this concept of facilitating price comparison boils down to—by setting this law above the natural laws of the marketplace, undesirable rigidities will be introduced into the Nation's food marketing system. What do I mean? I mean that such consumer satisfactions as quality, convenience, originality, appearance, efficiency—these will be sacrificed to the enervating precept of price per ounce.

This, indeed, raises a basic question: Whether spokesmen for the consumer are wiser and more flexible than the voices of 198 million consumers themselves, indicating their choices, as they do millions of times daily in the case of the food industry. Their purchases are made on the basis of the most demanding standards in the world—their own personal satisfactions. Their expressions of individuality should not be sacrificed to someone else's definition of what is the important measure of value. The consumers' right to choose is too precious to be changed by governmental decisions into lowest common denominator definitions of what's good for each and every one of us.

This point was made well by an anecdote in the *Saturday Review* of April 9, 1966. In a remarkably well-balanced article on this legislative proposal, the author tells of a central European housewife, the guest of a Congressman, visiting an American supermarket with its thousands of choices. She is told how this legislation will reduce confusion and responds: "Confusion? I wish we had some of this confusion at home. We could use it."

You have before you legislation that is labeled a remedy for ills of the marketplace. This innocent-looking remedy has an appealing—although not very accurate—label. Yet it can be likened to a powerful untested drug which is ineffective to cure the ailment and has grave side effects.

I ask you to please consider carefully whether positive values of this marketplace—the envy of the world—will be lost by applying remedies out of proportion to the ailments. Consider whether enough real study has been given to what this legislation would do to the structure and performance of a vital marketplace.

Consider whether this bill, in fact, represents lost faith in the marketplace. I would ask you to recall the Biblical story of Esau trading his birthright for a stew to satisfy his momentary hunger. At stake is the consumer's birthright to the fruits of free enterprise.

Gentlemen, I thank you for permitting me to appear before you today.

The CHAIRMAN. Thank you, Mr. Yohalem.

Mr. Moss.

Mr. Moss. Mr. Chairman, I would like to briefly make this observation. A theme of grave concern runs through the statements that have been made to this committee. I doubt there is a more responsible committee in either House of the Congress. I think you have no need to fear that the Congress is about to take any action brash in nature or destructive in its impact. I have not the slightest doubt that we will consider every aspect of this with great care.

You must also recognize that it has taken instances of failure at the marketplace. I can remember not too long ago when we got into another field in the jurisdiction of this committee where we had clear evidence of a free enterprise of use of the marketplace.

We have had other instances. So we recognize the very great responsibilities we bear as the representatives of both the consumer and the business community, frequently one and the same.

I don't think that there is a need for constant expression of fears which are thought of as anything that could be in my judgment reasonably the legislative proposals now pending before the Congress.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. No comment. Thank you very much for your statement. I sincerely hope that all of the good promises that my colleague from California makes about what is going to happen really transpires.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I would like to make the observation that there seems to be some area of feeling that in the merchandising of food products that there is to some degree some deception as to merchandising. I do not in total agree with some of the arguments that have been presented by the proponents of this legislation. I do feel that many of the examples or most of the examples are subject to provisions in existing law. Existing law covers many of the practices that proponents of this bill cite in support for this bill.



However, in your judgment do you feel that there are some areas where there is a practice of deception that should be more clearly outlined in legislation at this time?

Mr. YOHALEM. Oh, I guess I would have to say the answer to that is yes because no system is ever operating to complete perfection. I am sure that if a particular incident in the marketplace is not covered at the particular moment, a more stringent legislation enactment might do so. However, I feel that this legislation goes broadly beyond the area of fraud and deception and moves into an area where, shall I say, the balance of the marketplace is being questioned; namely, taking price, by facilitating price comparison as being so important that all other factors of the marketplace disappear or are subordinated, such things as the quality of the product, the convenience of packaging, the aroma, the taste, the convenience of storage, the myriad of such additional qualities that go to make up a total package or total concept of a product are all subordinated to bringing one factor out of the total wheel.

It would be like removing a spoke which thereby weakens the total operation of the wheel.

Mr. NELSEN. Another question. The one point that comes into the discussions from the testimony is slack fill. I would be led to believe that the Federal Trade Commission and Food and Drug—which agency is involved I am not sure, but anyway I am led to believe from testimony that they now have the authority to bring some penalty against those who slack-fill.

Have you any knowledge of that?

Mr. YOHALEM. To my understanding, there is authority both within the Federal Trade Commission and the Food and Drug Administration to prosecute slack fill. May I volunteer the statement that we would be in favor of any legislation that would prevent fraudulent and deceptive packaging, whether it be slack fill or any other fraudulent and deceptive packaging? Now this is to be distinguished from packaging that has a new appearance or is different or is convenient or stores better.

Mr. NELSEN. While my time permits, I noticed yesterday in the testimony the "cents off" technique, that one of the witnesses had indicated that they had attempted to work with regulatory agencies to try to move away from this practice, which indicates also that there is machinery now in the law under some plan to straighten out some of these practices if they are wrong.

Have you any comment on that?

Now the "cents off" technique could be regulated under present law as I understand it by setting up some new rules under the Division of Trade Practice Conferences and guides of the Federal Trade Commission.

Mr. YOHALEM. I am sorry, I am not too familiar with that except to say this, that in my opinion the cents off should not be prohibited. It could be regulated through guidelines. Whether it be before the Federal Trade Commission or whether it be required here by new legislation, whether it be an amendment to the Federal Trade Commission Act, I do not want to now say except that a prohibition of cents off in my opinion would be harmful to all sectors of our economy,

the large and small manufacturers, particularly the small manufacturer, who want to be conspicuous and advertising offer to ask the grocer to pass on the cents off.

Mr. CURRIN. Thank you, Mr. Chairman. I have no further questions.

The Chairman. Mr. CURRIN.

Mr. CURRIN. Thank you, Mr. Chairman.

Mr. YONAHAM. In connection with the "cents off" promotion, how can you be assured that you put such a label on a label of your product, that it will be so reduced by the grocer? How can you be assured that this reduction is going to actually reach the consumer? What is to prevent the grocer from simultaneously raising the general price of the product to the equivalent of what the "cents off" is?

Mr. YONAHAM. May I take a moment, Mr. CURRIN, and walk back a way. When our company determines that we want to institute a "cents off" promotion, usually it is for a particular area because we either are introducing a product or want to reintroduce a product to the consumer in that area. We first go to the headquarters points of all of our basic consumers in that area in order to explain to them that the promotion will be run 1 month or 6 weeks hence, because it is to our mutual advantage to explain that a specially labeled product will be introduced into their store so that they in turn can make advance commitments to take care of this specially labeled merchandise. We explain to them that at that time they will be given at least as much refund as the cents off or reduced price for that product. We also ask them whether or not they desire to accept that offer because they have the right to refuse to accept the offer.

It is our opinion that when they accept that offer morally and ethically, if not legally, they are bound to reduce the price at least commensurate with what we have given them; to wit, whatever is on that label. So they have advance notice, they have agreed to accept the merchandise, they know they are getting a reduced price, therefore they should reduce the price.

Now if they don't we believe that the self-correction of the marketplace eventually takes care of that particular individual because the fellow on the corner or around the corner, his competitor, will have reduced the price. So, although we do not legally have the right to make an arrangement with the retailer to force him to pass it on, we do everything we know how to, through the regular marketplace, to have him pass it on.

Mr. CURRIN. Do you do anything in the nature of a followup to see that the grocer has reduced the price when you are operating such a "cents off" program?

Mr. YONAHAM. I would like to say that if we felt that the number of grocers who did not pass on cents off promotions were flagrant we would not be using this type of promotion because we would then be just wasting money.

Mr. CURRIN. But do you have a followup on these programs to be sure there is such a reduction?

Mr. YONAHAM. We have our own field salesmen who check regularly.

Mr. CURRIN. Somebody follows through to see whether the price is reduced by the amount of the "cents off"?

Mr. YONAHAM. Yes, sir.

Mr. CURTIN. That is all.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. No questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Thank you.

I say categorically the best regulations are those designed to prevent fraud and deception, to safeguard health and to further the openness of the marketplace. That is the purpose of the bill.

Thank you very kindly.

Mr. YOHAELE. Thank you.

The CHAIRMAN. Our next witness will be Mr. E. Scott Pattison, secretary and manager of the Soap & Detergent Association.

Mr. Pattison, I say to you as I have to the other two, if you have a long statement we hope you will put it in the record and summarize it and give us the benefit of your views.

#### STATEMENT OF E. SCOTT PATTISON, SECRETARY AND MANAGER, THE SOAP & DETERGENT ASSOCIATION

Mr. PATTISON. Mr. Chairman, the statement I have is quite short. I believe it will come within the scope of the 10- or 15-minute period.

The CHAIRMAN. All right.

Mr. PATTISON. Mr. Chairman, my name is Scott Pattison. I am manager and secretary of the Soap & Detergent Association, and represent members who make over 90 percent of U.S. production of these materials, most of which are sold in retail packages for household use. In addition to those who make the well-known national brands, we have over 100 members who make lesser known products and materials, for cleaning jobs in industry and institutions as well as in the home.

We are glad to be thought of as a promotion-minded industry, coming up with new products and new packages to attract the consumer and stimulate sales. All over the world, high cleanliness standards and good health standards go hand in hand. In America, where the consumption of soaps and detergents is about 30 pounds per capita, there is no such thing as "the great unwashed." Yet, on a family basis, these socially constructive products are not a big drain on the purse strings. The housewife in an average family spends about \$26 per year on our products for the purpose of keeping things and people clean.

Intense competition forces our members to maximize the economic value every housewife gets for the dollars she spends on our packaged products. Figures show that her expenditures for soaps and detergents since 1950 have risen far less rapidly than other family expenditures. At the same time, cleanliness standards have been improving. We continue to introduce products which do more for the money. Then, we apply advertising and promotion efforts—including "cents-off" bargain sales—to stimulate home-trial performance comparisons. The housewife who puts 35 cents or less into a trial purchase of a new brand soon finds for herself whether it cleans as well and goes as far as her customary purchase. Only by home trial can she become an informed consumer and good judge of product value.

Unfortunately, we feel that S. 985 and H.R. 15440, referred to as Fair Packaging and Labeling Acts, will not assist the consumer in maximizing the economic value of her detergent purchases. Rather, they will tend to raise the costs to the consumer of maintaining a clean and sanitary household. They may well impede the introduction of other new products which housewives will find even more efficient or convenient. In addition, the proposed regulations could bear disproportionately on the smaller company which must make the package its primary sales aid, since the small company can't so easily shift to alternate promotional tools.

Let me give you an example: Some time ago, one of our smaller members inquired about the introduction of a small detergent bar to be inserted within a plastic sponge. As you know a number of variations of this concept have now been introduced for cleaning pots and pans, some with soap impregnated in the plastic or enclosed in the box. These are commonly sold by count, without reference to the weight of detergent. If these packaging bills had been in effect, however, new regulations might have required clearance of the package labeling as to inclusion of the weight of the detergent, the weight of the plastic sponge, or some combination. Someone might even have wanted to call a week-long commodity conference to set standards for small, medium, and king size pot cleaners.

What was true for pot cleaners yesterday might apply to laundry products tomorrow. A patent has been issued, for example, on a multi-layered laundry pellet from which detergent first dissolves, then the bleach. What kind of weight labeling might apply if this happens to succeed? What would cost-per-pound mean anyway? In other words, our industry has never been content just to offer soap for sale at so much a pound. We improve on soap, and we generate habit-changing influences to get the improved products a fair consumer trial. After that, repeat purchase is the payoff, and this cannot be won by either a deceptive package or deceptive product.

So far as those sections of the bill that are aimed at deception in labeling are concerned, we find little in section 4 of S. 985 or H.R. 15440 not already covered by the model weights and measures law, by the Federal Trade Commission Act or certain sections of the Federal Food, Drug, and Cosmetic Act. Experienced State weights and measures officials already have under good control such technicalities as which panel is the principal display panel and which units (pounds or ounces) are most understandable in net contents labeling.

You know, I think if the original weights and measures had been labeled truth in labeling law it could have carried over and in a great many sections been adopted as a Federal law and would have solved this whole problem that we are dealing with today. Unfortunately, the name "model weights and measures law" does not have the same appeal as the name "truth in packaging" but yet when you get down to the "deception" elements in the new law they are all there in the weights and measures law that has been adopted by so many States and on which so much interpretation has already been so thoroughly worked out.

Frankly, if the label deception provisions of section 4 constituted the whole bill, as the term "truth in packaging" implies, then our only

suggestion would be that a Federal adaptation of the wording of the model State weights and measures bill would cover these same commitments to "truth in packaging" in terms already well defined. Considering the extent of State laws now in effect, this would be redundant in a way, but not objectionable to the industry.

Section 5, however, makes new grants of power which are not simply redundant, but rather are going to cost the housewife more money, with little gained in return. Even though the power to put soap products in standard size packages is permissive—rather than mandatory—its ultimate effect would be likely to raise the dollar cost of cleanliness.

Why is this so? Well, to begin with the charge to the promulgating authorities in section 5 goes back to the bill's declaration of policy to "facilitate price comparisons." By whatever means this objective is advanced—by standard weights of packages, uniform designation of what constitutes a "large" package, or whatever—emphasis is placed on cost per pound or pint or other unit. For detergents, cost per unit weight or volume gives a delusion of value judgment without the substance. Why? Because in our industry we are dealing with products where cost per pound between different types or brands is not a measure of value—any more than it would be for razor blades. People are more interested in cost per shave rather than cost per blade.

The consumer distracted from a performance comparison at her own sink or washer, to a store-shelf comparison based on unit weight, may never make the trial purchase of the product of higher unit cost that might serve her best.

Indeed, the emphasis on price-per-pound, or price-per-pint comparisons, growing out of compulsory uniform weights between brands, might very well encourage a return to products of a generation ago that were heavier for the cleaning power they delivered.

As has been pointed out in previous testimony, the chief reason for odd ounce package weights arises from density variations in manufacture—as a means of avoiding the added costs of different size boxes for different brands filled on the same packaging line. Standard weights would simply mean extra costs for additional box sizes and adjustments. At the same time, an illusion of pound-against-pound comparability would be created, which would not, in fact, be a good guide to the best buy.

Perhaps one must decide whom we are trying to satisfy: Are we talking about the consumer protectionist, who writes articles about shopping with a slide rule but seldom does her own wash or are we talking about the realistic homemaker who can tell you exactly how many loads of laundry she can get from a 35-cent box of her preferred detergent and how this product compares in value with others she has tried without even having read how many ounces are in the box. Since her weekly wash is quite uniform, she can compare powders against tablets against liquids without even looking at the unit weight.

The fact is that our products are used in each home in a unique combination of conditions—water temperature, water hardness, type of washer, type of fabrics, typical soil, all of which differ from household to household. Then one housewife may be more willing than another to pay extra for high whiteness or better stain removal. In choosing

among the products on the grocery store shelf, there can be no single standard test of cleaning power or good value. The housewife with a genuine concern for minimizing detergent cost must be her own performance tester.

I should also like to call to your attention the added costs likely to arise out of section 5(c)(4)—under certain conditions—a statement of ingredients and composition. We feel strongly that in a bill dealing with economic values, rather than with health and safety, there is no justification for requiring the disclosure of ingredients and composition, even though they may not be strictly proprietary secrets.

In many detergent products, it is not the ingredients, per se, but the way in which they are physically formed or combined, that sets apart a good fast-dissolving product from one of poorer quality. At the very least, the listing of ingredients would complicate the manufacturer's problem if there were to be minor changes in formulation. Such a listing would be of far less significance to consumers than directions for use. It is here that the cost-conscious housewife could learn to make real savings, but often these directions are not well read or followed. The attempt to save money by comparing listed chemical ingredients—like the attempt to compare products by weight or volume—can only lead to mistaken ideas of relative value.

I think that a more careful following of directions by the housewife would probably save, oh, maybe in some cases 20 percent of the housewife's detergent bill but generally they just pour some in as you know, so that the saving of some very much smaller percent in the marketplace by going through all this slide rule business does not seem to make much sense.

I may be reminded here that computation of cost per ounce must be valid, as between smaller and larger packages of the same brand. This is true, but such computation, for the most part, is a time-wasting, academic game. The consistent policy of our members who market the same detergent in various size packages is to let the price per ounce reflect packaging and marketing economies in the sale of the larger units. Exceptions occur occasionally and temporarily when a special bargain campaign may be in progress on a smaller size or a store is overstoked. The fact remains that the consistent purchase of the largest size unit which offers the desired convenience in transport and storage will pay off over the year, which is the way a housewife buys detergents so the whole issue hardly justifies governmental concern. As a matter of fact, a great many shoppers base the size of package they buy on the amount of cash they bring to the store with them, or the height of a kitchen shelf, or maybe if they bring Dad along they can buy the large size box whereas if they go alone they have to lug it out to the car themselves, ignoring the few cents they gain or lose for their personal preference.

This decision to base package-size choice on factors other than cost per ounce does not mean a lack of concern for savings. A realistic housewife has only so much time for her many jobs. Proper application of detergents—using the right product and procedure for a particular task—offers possibilities for savings far greater than shopping the alternate sizes.

We have encouraged this type of money-saving consumer education.

As a matter of fact, the Government Printing Office of the United States has a pamphlet utilizing material we supplied to them, so we are not against saving money on detergents.

Although these bills are aimed against deception, we cannot help but feel that there is an element of deception in section 5 (d) (e) (f) in its frequent reference to voluntary product standards. It is voluntary, like voluntary military service the day before your draft call arrives. Clearly, under section 5(d), regulations can sooner or later be issued which are in no sense a voluntary consensus. Agreement by manufacturers, distributors and consumer representatives at a commodity conference would be approached under the gun of an imposed set of regulations. The Department itself or a minority of the committee could create a situation leading to an imposed set of commodity standards.

Under section 5(c) (3) we also find a grant of authority to regulate—or in essence prohibit—"cents-off" label statements without any actual showing of deceptive acts or practices. Here is a clear-cut case of sacrificing the economic interest of the consumer because here or there someone can come up with a bad example. In effect, the grant of power says: Since there may be a bad apple in the cents off barrel consider throwing away the barrelful. If one's real aim is to maximize economic value to the consumer, the merits or demerits of "cents off" offers should be approached on an economic and statistical basis, not by slogans such as "cents-off what." When this is done, we find that the manufacturers' price reductions amounting to many million dollars every year, are passed along to consumers by almost all stores and supermarkets as discounts from each store's regular retail price.

Now some of the confusion has arisen from the stores that have charge services and delivery services, that have a higher regular retail price from some other store which is an economy type of store, so that the cents-off price in all these stores will not necessarily be uniform because retailers may have their own discount schedules. But if a woman consistently shops in one store she will consistently find that the saving from that store's regular retail price is being passed along to her.

It is worth noting that, under its existing authority, the FTC has been developing guidelines so that this flag or signal of a manufacturer's price concession will not lose its meaning and attention value to consumers.

Initially, we pointed out that the informed consumer in the detergent field is the one who is stimulated to make actual performance comparisons in her own washer or home. It is the consumer who has informed herself of a product's merits or its weaknesses by actual use who can maximize the economic value of her purchases over the course of the year. "Cents off" acts as a flag for evaluation or re-evaluation of competing products. If they were simply reduced in price without the flag, it is unlikely that the housewife would notice the opportunity for trial that she was missing.

To sum up:

1. We consider the labeling portion of these bills to be redundant, of value only so that an aura of consumer protection is superimposed on already adequate weapons against deception as to package weights

and quantities. If it is the desire of the Congress to highlight this concern, the bill should be kept as close as possible to existing statutes such as the model State weights and measures law.

2. We consider the so-called voluntary procedure for establishing commodity standards of weight and volume—that is section 5—to be not truly voluntary.

3. Because standard weights, quantities, or sizes are not meaningful for cost comparisons in the field of soap and detergents, any requirement for the imposition of commodity standards affecting such products should be eliminated from the bill. This applies to weight or volume under section 5(d) (2).

4. If a standards program were to be set up under section 5, so as to stimulate direct cost-per-ounce comparisons between one brand and another, it could delude the customer, handicap the smaller producer, and needlessly interfere with the differentiated product competition that has made us world leaders in cleanliness products and the healthful consequences of their use.

Now I might add that the other day I heard the thought expressed by one of the members of the committee that every industry comes down here and protests that it is going to be ruined or put out of business by every new regulation such as here proposed. Let me say right here that I don't think this legislation will put the soap industry out of business by a long shot and I don't think it is going to stop product improvement either, or to make packages less attractive.

I do believe, as I have tried to show, that it will add to costs and that the consumer's share of these extra costs will be greater than the presumed saving she can make by weight-based cost-comparison of our products.

For example, Mr. Chairman, you pointed out the other day that the bill provides for hearings, more hearings, and appeals to protect companies from arbitrary or unreasonable package requirements. Now this is true, but every such hearing costs time and money and diverts management from its marketing job. The consumer helps pay this cost. Suppose in our case the whole "due regard" procedure should end up with the fact that we needed no standardization of the detergent packages at all. Then all this time and money spent and all these broad promises made to the consumer and out of the mountain has come a mouse.

On the other hand, if the law does potentially have real teeth then I suggest that the cost volume is going to be worse for the consumer than her present alleged losses from being unable to make price comparisons.

Thank you, sir.

The CHAIRMAN. Thank you, Mr. Pattison.

Mr. Moss?

Mr. Moss. Mr. Pattison, how much does a regular size bar of hand soap weigh?

Mr. PATTISON. Well, are you talking about at the time that it is made or when it is sold, because a regular size bar of hand soap will lose weight after the time it is made? It will not lose value but will lose water.



Mr. Moss. I ask the question because of the coincidence last evening when I was in the grocery store and I started looking at some hand soap. I noticed that the great majority of them were taped together three or four or two at either 1 or 2 cents off and some of them looked like they had been there for quite a while. Some of them had weights on the wrapper and some of them had no weights to represent regular size.

Mr. PATTISON. I think I can explain that, sir. The conventional practice in the soap business, going back to the days when bars were sold unwrapped, was not to put the weight on the bar because of the fact that a 4-ounce bar, which if it is properly made, might contain 20 percent moisture; it might lose some of this moisture if it happened to be in a very dry, low-humidity store and if somebody weighed it they would say they were getting lost value. Now it so happens that certain soap bars—

Mr. Moss. Let's shorten this. How much should it weigh at the time of manufacture?

Mr. PATTISON. Well, one size bar weighs, for example, 4 ounces.

Mr. Moss. I asked you one that is labeled regular size.

Mr. PATTISON. Well, each manufacturer might have a different definition of what constitutes regular.

Mr. Moss. That is all I wanted to know.

Mr. PATTISON. That is true.

Mr. Moss. Now on this matter of ingredients, I have read, and I have been trying here in consultation with the staff to recollect just where, it may be in some of the mail that I have received, that the combining of certain types of bleaches or detergents with other types is potentially dangerous.

Mr. PATTISON. You mean combining by the housewife?

Mr. Moss. Yes.

Mr. PATTISON. Well, there is one particular combination with bleach which a housewife can make which causes an irritating amount of gas. I would not call it dangerous because we don't have any record that anybody was ever fatally damaged by this reaction.

Mr. Moss. I didn't necessarily have to have a death to establish the need—

Mr. PATTISON. Automobile casualties or something like that, actually nothing like that. There is some irritation if you happen to combine an acid product with a chlorine bleach.

Mr. Moss. It is important that there be some notice of that fact available to the housewife?

Mr. PATTISON. Well, this has been made known by the industry and is sometimes included on the label. If it is under the Federal Hazardous Substance Act there is a warning on the package. But some of these products are not under the Federal Hazardous Substance Act at the present time. By themselves they are not hazardous.

Mr. Moss. In combinations which could logically be arrived at through the purchase by an uninformed housewife at the grocery store could they become hazardous?

Mr. PATTISON. I do not believe, sir, even the irritation I am talking about which would come only in a very confined space in a bathroom, for example, would meet the normal Federal requirement of what is

called hazardous; it would be irritating, it would be objectionable, but I doubt that it would be classed as hazardous.

Mr. MOSS. Mr. Chairman, could we hold the record open to receive from the gentleman general information on the specific point?

Mr. PATTISON. I would be very glad to see that done, sir.

Mr. MOSS. I have had a great deal of mail on packaging and a considerable preponderance of that mail has clearly been critical of the packaging practices of the detergent and soap manufacturing group. I say that notwithstanding the fact that I happen to have a very fine establishment of such manufacturers in my congressional district. Nevertheless the criticism is strong and the solution here proposed of merely continuing to try something new is not always the most practical or the most satisfactory.

Mr. PATTISON. Representative Moss, would you care to have a complete answer to that question about why some soap has weight on it and some does not?

Mr. MOSS. I think I understand from some of my chemistry that there would be a loss of moisture and this could affect the weight and that is probably normally more true of soaps than of some of the detergent compounds that are now utilized.

Mr. PATTISON. Some products are classified as drugs because they contain bacteriostatic agents. Those come under the Federal Food and Drug Act and the weight is required. The ones that do not contain anything except just ordinary soap are sold by count.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

There are certain features which have been pointed out in the hearings on the bill that make reasons for some legislation. Do you feel that these deceptive practices might well be reached by amendments to the existing Pure Food, Drug, and Cosmetic Act and the Federal Trade Commission rather than to create a new department?

Mr. PATTISON. I would agree with that, Mr. Younger, yes. As I suggested there are many established phrases against deception that are in the model State weights and measures bill which if they are not already in the Federal Trade Commission Act for Federal enforcement might be lifted out of the State model bill and put into the Federal bill.

Mr. YOUNGER. Either into the Pure Food, Drug, and Cosmetic Act or into the Federal Trade Commission?

Mr. PATTISON. Yes, sir.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. I have no questions at this time, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

First I am interested in what became of the old big bar of Lennox soap my mother used to buy by the case. It would last for weeks. Is it still on the market?

Mr. PATTISON. Lennox soap?

Mr. NELSEN. Yes, I remember that.

Mr. PATTISON. I really don't know, sir. You know in some parts of the country the big bars of soap still have a fair amount of popularity

but in other parts of the country they just don't move off the grocer's shelf so they pretty well have passed out of the picture. This is part of the general product improvement program I was talking about before.

Mr. NELSEN. Yes, I understand.

You made the statement relative to some of the products on the market, some are classified as drugs.

Mr. PATTISON. Yes, sir.

Mr. NELSEN. Who classifies them?

Mr. PATTISON. Well, if a manufacturer wishes to make certain claims for bacterial action, then he falls within the classification of the Federal Food, Drug, and Cosmetic Act and is required to meet all the requirements of that act.

Now soap, per se, is exempt from the Federal Food, Drug, and Cosmetic Act. There was a specific exemption put in by Dr. Copeland years and years ago because he felt the more soap that was used for the country the better. As a result of this exemption a bar which makes no medical claim can be sold without meeting the strict requirements of the Food, Drug, and Cosmetic Act.

Mr. NELSEN. In the event a detergent or a soap or a combination of ingredients were dangerous to health, would not the Food and Drug Administration have the authority to so classify it if in their findings they found it to be dangerous the way it is made up?

Mr. PATTISON. Oh, yes. This would come under the Hazardous Substances Act.

Mr. NELSEN. It would come under it?

Mr. PATTISON. Yes, sir. Some types of special cleaners are labeled "caution" for that very reason. Now other products that are used in the dishpan obviously are going to be used on dishes, and are made of a completely nontoxic material so they don't have to come under that provision of the law.

Mr. NELSEN. In other words, if there is a product on the market that is dangerous to public health and it is not so classified it is because authorities that have the right to make that classification have not exercised it.

Mr. PATTISON. That is right, sir.

Mr. NELSEN. I remember once I was at a meeting and it was very, very hot weather and somebody told me that if I would take a spoonful of salt I would overcome this uncomfortable heat. I took a very large spoonful and I became quite ill. So it does not always follow that a product is good, it depends on how it is used to some degree also.

Mr. PATTISON. That is right. If people would follow the directions very carefully given on these packages, why, there is little possibility of hazard from using in combination two completely different packages or products designed for different purposes and combining them—it is just like the kid who goes down in the chemistry lab with the ChemCraft set and just mixes things. He might possibly hit on something that in combination under those conditions would be dangerous, but the warning is on the package wherever that possibility exists.

Mr. NELSEN. I thank the witness. I am still sorry about Lennox soap. It was pretty good.

Mr. PATTISON. If I can find out who makes it, I will send you a case.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

I want to be sure, Mr. Pattison, that your testimony is in opposition to the cents-off label statement. Is that correct?

Mr. PATTISON. No, my statement says that it would be regulated by the bill and it might be prohibited if the regulatory agency should so decide.

Mr. PICKLE. Well, what is your specific position on it?

Mr. PATTISON. My specific position is that so far as cents off is a deceptive or untrue representation that the present law would provide a remedy for it. As an example of that, the Federal Trade Commission is right at this present moment setting up guidelines against deceptive use of cents off. I would say that cents off used legitimately and used truthfully actually benefits the consumer a great deal both by the extra bargains they get and also because of its effect of introducing new products which they might not otherwise try.

Mr. PICKLE. Would you say that there had been some abuse of this practice by manufacturers?

Mr. PATTISON. I am sure that in almost anything you could think of in the merchandising field, whether it is cents off or whether it is the shape of the box or something, there has been some abuse. The only point is where this abuse has taken place is the customer usually gets wise to it after her first or second purchase and she quits buying that product and the product goes off the market because it can't maintain any repeat business.

Mr. PICKLE. We must not allow the situation to exist that, just so long as they recover from damage, then it would be all right?

Mr. PATTISON. No; but you have to weigh the good against the bad, I think, in any of these decisions.

Mr. PICKLE. Would it not be reasonable to say that it would be a difficult matter to always make it clear on the label what you mean by cents off?

Mr. PATTISON. I think that it is fairly well understood by the average housewife that this represents a discount from the normal price that is ordinarily charged in that particular store. I think the housewife understands this and I think that—well, statistics which the industry has compiled shows in well over 90 percent of the cases this is what the customer gets.

Mr. PICKLE. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Pattison, is there a certain amount of slack fill in all the boxes of detergent produced by the company that you represent?

Mr. PATTISON. Well, if you mean slack fill at the time of filling, I would say no. If you mean slack fill at the time the customer buys the package, I think this may occur with some products because people like a product which is made up of these small little bubbles or nodules and these little bubbles or nodules have a tendency to shake down when they are on a freight car or truck going to their destination. So by the time they get to the destination there is a slack fill in the fact that the product is down from the top of the box.

Now the weight, you will understand, is correct.

Mr. CURTIN. Many of these powdered products are more or less aerated, are they not, when they are packed?

Mr. PATTISON. When the products are formulated they are dried in such a way that they will be fast dissolving. Now this means they are in the form of a little bubble, so if that is what you mean by aerated, that is true. Now it is not like the ice cream process or anything like that.

Mr. CURTIN. Then isn't it practically impossible for your industry to put out packaged boxes of powdered detergents that are not going to have some slack fill in the top by the time the consumer gets to use them.

Mr. PATTISON. I think so. The only way to do that would be to put out a very, very dense product that the customer would not want to buy.

Mr. CURTIN. That would not be easily removed from the packages?

Mr. PATTISON. That is right.

Mr. CURTIN. That is all. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions.

The CHAIRMAN. Mr. Carter.

Mr. CARTER. No questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. I would like to ask one question. Have your people gone into this question of cost?

Mr. PATTISON. Question of cost?

Mr. SPRINGER. Yes, of cost. I don't find anything in your statement on the question of cost.

Mr. PATTISON. A trade association executive is in a rather limited position to know the costs of individual manufacturers. Now I believe later today or sometime within the week you are going to have before you one or two production authorities from the actual producer companies.

Mr. SPRINGER. Who are they?

Mr. PATTISON. Mr. Halverstadt of Proctor & Gamble, for example.

Mr. SPRINGER. Who else?

Mr. PATTISON. And I think Mr. Hurlbert of Colgate-Palmolive is scheduled or at least is going to submit testimony.

Mr. SPRINGER. Are they going to bring in cost figures?

Mr. PATTISON. Well, I don't know that they are going to bring in cost figures but they are going to have in their file of background material, material on the added cost of conforming to what this bill might result in.

Now of course it is pretty hard to generate costs for something that is as indefinite as this bill is at the present time as to just what changes would be required.

Mr. SPRINGER. All right. I hope they will come with the breakdown on cost because this is one thing this committee wants to know about. So I assume that you do not have, or are not qualified in this field, therefore I would not want to ask you any further questions on that matter.

I hope these people who come from the soap industry are going to come with some figures here which they can sustain.

Mr. PATTISON. I think you will probably find that.

Now there was one reference to cost that I would like to set the record straight on if I might just take another minute or two to do it.

In some of the earlier testimony Mrs. Peterson quoted a letter from a Denver housewife alleging that she bought the same size box of the same brand for the same price 2 weeks apart and that the earlier package contained 5 pounds 12 ounces while later the box only contained 5 pounds 4 ounces, and the price was the same. I think it was \$1.17 or something like that. I think she implied that this meant that there was a concealed price increase being passed on, that the box was made smaller, the price was the same and the housewife would probably never notice that it had gone from 12 ounces to 4 ounces.

Now it happens that the industry was concerned about this particular example and we were able to run it down. I have been given permission to mention the fact that the two products that were involved here while they both had the name Rinso, were not the same product. One was Rinso Blue, which had been supplanted by an improved product called Sunshine Rinso and it is the contention of the manufacturer that the Sunshine Rinso weighing 5 pounds 4 ounces because of an improved formulation will outperform the previous 5 pounds 12 ounces package. So the mere fact that the bulk of the package was reduced does not mean that there was a rise in the price so far as how many washes of clothes you get out of it. I think it should be in the record that that situation is not a case of concealed price increase.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Thank you so much. I do want to acknowledge that you gave us a good statement. We appreciate your being with us. We know that each person that comes here comes in good faith to give us their views. We want to hear all sides because when we mark up the bill it will be helpful to us.

Mr. PATTISON. Thank you.

The CHAIRMAN. The next witness is from my own State of West Virginia, Mr. Lawrence Barker, commissioner of labor in the State of West Virginia, and ex officio commissioner of weights and measures, speaking on behalf of the National Conference on Weights and Measures.

Mr. Barker, we are glad to have you here and to hear your testimony.

**STATEMENT OF LAWRENCE BARKER, COMMISSIONER OF LABOR,  
STATE OF WEST VIRGINIA, REPRESENTING NATIONAL CONFERENCE ON WEIGHTS AND MEASURES**

Mr. BARKER. Thank you, Mr. Chairman.

As you stated, I am the commissioner of labor of the State of West Virginia and ex officio commissioner of the State's weights and measures program.

I have been a member of the National Conference on Weights and Measures since June of 1961.

Dr. A. V. Astin, Director, National Bureau of Standards appointed me, for a 5-year term, to the Committee on Laws and Regulations in June of 1963. I served as acting chairman of that committee in 1964 and as chairman in 1965. I was elected to the office of vice chairman of the conference for 1965.

During the 1966 conference held in Denver, Colo., on July 15, I sponsored a resolution, relating to fair packaging and labeling legis-

lation. Upon passage of that resolution I was authorized by the Conference to appear in its behalf before this committee.

That resolution has been placed in the hands of the committee.  
(The resolution referred to follows:)

51ST NATIONAL CONFERENCE ON WEIGHTS AND MEASURES AT DENVER, COLORADO,  
JULY 11-15, 1966

RESOLUTION ON FAIR PACKAGING AND LABELING LEGISLATION

Whereas the National Conference on Weights and Measures has long provided leadership in a cooperative State-Federal-industry effort for nationwide uniformity in requirements for packaging and labeling of commodities in the interest of consumers; and

Whereas under the leadership of the National Conference on Weights and Measures, a majority of the States have adopted similar laws and regulations in the cause of uniformity, and many industries, at great expense, have complied with these laws and regulations, especially as they apply to labeling; and

Whereas in 1963, the 48th National Conference adopted a resolution of appreciation for congressional interest in "Truth in Packaging" legislation; and

Whereas U.S. Senate Bill S. 985, "Fair Packaging and Labeling," as reported favorably by the Senate Committee on Commerce in May 1966, and subsequently passed by the Senate, in general is consistent with the aims and efforts of this Conference: Therefore, be it

*Resolved*, That this 51st National Conference on Weights and Measures, duly assembled in Denver, Colorado, this 15th day of July, 1966, hereby endorses legislation on fair packaging and labeling to attain the goals parallel with this Conference; and, be it further

*Resolved*, That this Conference endorses enactment by the Congress of S. 985 as passed by the Senate, but recommends, in order to facilitate the accomplishment of the bill's objectives, certain technical language changes, as follows:

1. Section 12, pertaining to the bill's effect on State Law, should be clarified to reflect the view of the Senate Committee on Commerce, as published in the Report of the Committee, that "the bill is not intended to limit the authority of the States to establish such packaging and labeling standards as they deem necessary in response to State and local needs." Specifically, the Conference recommends the substitution of the words, "are inconsistent or in conflict with" for "differ from" in said Section 12.

This would make absolutely clear that State consumer-oriented weights and measures laws are not nullified, whether differing or not from Federal laws or regulations, if these are necessary for the protection of the citizens of the State and do not conflict with Federal laws or regulations so as unreasonably to affect the flow of products in interstate commerce.

2. The requirements for the declaration of net quantity of contents on the label under Section 4(a)(3)(A) should be expressed in terms of the largest whole unit or decimal fraction thereof, rather than being restricted to ounces or whole units of pounds, pints or quarts. Declarations of quantities of length, area and numerical count should be included in such requirements.

3. Since the words "accurately stated" in Section 4(a)(2) could be construed under present custom and usage to allow no measurement inaccuracy whatsoever, the Conference recommends adding the phrase "as is consistent with good packaging practice" after the words "accurately stated."

4. The parenthetical expression in Section 4(a)(3)(B), "(by typography, layout, color, embossing, or molding)," should be deleted, since the three critical points with respect to conspicuousness are type size, color contrast, and free surrounding area; and, be it further

*Resolved*, That copies of this resolution be transmitted to the appropriate committee or committees of Congress and to the Secretary of Commerce.

MR. BARKER. I feel that it is an honor to have served on the Laws and Regulations Committee, especially during the years when Federal legislation was being offered.

I first heard Senator Philip A. Hart on June 14, 1961, and then again on June 6, 1962. Since that time I have heard many comments,

pro and con. It has been my desire to see such philosophy enacted into Federal law.

I believe in the old adage of "Where there's a wrong, there's a remedy," and sometimes we must pass a law to get that remedy.

Evidently something was wrong because of such interest and such study the "Hart bill" created. Almost immediately active response was noted and our Laws and Regulations Committee Chairman, Mr. J. L. Littlefield, of Michigan, issued invitations to more than 200 trade association executives and a few selected representatives of packagers to meet in Washington on December 13, 1963, for the purpose of discussing the problem and initiating effort toward solving our problems concerning fair packaging and labeling.

Almost 100 individuals responded and at that time already two associations, the Cereal Institute and the Tissue Association, had published standards for their members.

Before this meeting adjourned, the representatives of industry formed an ad hoc committee and elected as chairman Mr. Frank T. Dierson, Grocery Manufacturers of America, Inc., Mr. James W. Bell, National Canners Association as vice-chairman and Mr. John F. Speer, International Association of Ice Cream Manufacturers as secretary.

The laws and regulations committee, on February 17 and 18, 1964, held its regular interim meeting in Washington and through open sessions, private hearings and executive sessions, I believe more progress was made than ever before in the field of packaging and labeling.

The results of these meetings were adopted on June 24, 1965, while I acted as chairman of the laws and regulations committee.

I point out the aforesaid statements only to preface the clarification of the resolution adopted at our 51st conference in Denver.

In 1963 our conference endorsed the efforts of Senator Hart and the Antitrust and Monopoly Subcommittee of the Judiciary Committee in their interest and activity for "truth in packaging." In 1964 we boldly affirmed our appreciation to Mrs. Esther Peterson for her efforts in behalf of Federal legislation.

U.S. Senate bill S. 985 as reported favorably by the Senate Committee on Commerce in May 1966 and subsequently passed by the Senate, in general is consistent with our aims and efforts, but we recommended, as per the resolution, which has been filed with the committee and included in my statement, in order to facilitate the accomplishments of the bill's objectives, certain technical language changes, as follows:

1. Section 12, pertaining to the bill's effect on State law, should be clarified to reflect the view of the Senate Committee on Commerce, as published in the report of the committee, that "the bill is not intended to limit the authority of the States to establish such packaging and labeling standards as they deem necessary in response to State and local needs."

Specifically, the conference recommends the substitution of the words, "are inconsistent or in conflict with" for "differ from" in said section 12. This would make absolutely clear that State consumer-oriented weights and measures laws are not nullified, whether differing or not from Federal laws or regulations, if these are necessary for the protection of the citizens of the State and do not conflict with



Federal laws or regulations so as unreasonably to affect the flow of products in interstate commerce.

2. The requirements for the declaration of net quantity of contents on the label under section 4(a) (3) (A) should be expressed in terms of the largest whole unit or decimal fraction thereof, rather than being restricted to ounces or whole units of pounds, pints, or quarts. Declarations of quantities of length, area, and numerical count should be included in such requirements.

3. Since the words "accurately stated" in section 4(a) (2) could be construed under present custom and usage to allow no measurement inaccuracy whatsoever, the conference recommends adding the phrase "as is consistent with good packaging practice" after the words "accurately stated."

4. The parenthetical expression in section 4(a) (3) (B), "(by typography, layout, color, embossing, or molding)," should be deleted, since the three critical points with respect to conspicuousness are type size, color contrast, and free surrounding area.

It is my firm view, and I believe this would be concurred in by the weights and measures officials from every State in the Union, that the voice of the Congress of the United States should be heard in connection with fair packaging and labeling.

As you know, the States individually have carried the burden of the load in this field throughout the years. The guidance of the Federal Government through legislative activity is needed, and will serve the excellent purpose of providing a focal point for nationwide uniformity—first, in self-compliance; and second, in enforcement authority. I am convinced that the consumer needs this help and that in the long run packagers will benefit from it, also.

That is the end of my statement, Mr. Chairman.

The CHAIRMAN. Mr. Barker, I will defer my questions until the end of the questioning.

Mr. Kornegay?

Mr. KORNEGAY. Mr. Barker, I certainly appreciate your coming here, and your statement. I gather you feel that this bill would serve no application which you set forth and continue on page 3 of your statement. Your statement would be in the best interests of the State regulatory bodies and the general public.

Mr. BARKER. Yes, sir. Many of the witnesses have expressed concern over section 5 of the bill with which I am sure you are familiar.

Mr. KORNEGAY. Do you have any reservations or concerns over that section of the bill?

Mr. BARKER. Could I confer with the secretary of our conference, Mr. Kornegay?

Mr. KORNEGAY. Yes.

Mr. BARKER. Mr. Jensen, our secretary of the national conference.

That is correct. With respect to voluntary standards, we see no conflict with our general philosophy and that of section 5.

Mr. KORNEGAY. Of course section 5 does more than just describe that. As I understand it, it contains language—

Mr. BARKER. Yes.

Mr. KORNEGAY (continuing). That the trade commission imposed involuntary. I think that is the way every concern has been expressed here.

Mr. BARKER. We made a complete study of the entire bill at the conference and the technical requirements. Each section has been thoroughly studied.

Mr. KORNEGAY. You have no objection?

Mr. BARKER. No, sir, other than those pointed out in our resolution.

Mr. KORNEGAY. All right, thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Barker, how many States are in the National Conference on Weights and Measures?

Mr. BARKER. All 50 are members of the national conference. I would say we have at least 85 to 90 percent representation of all States. I believe we had 45 present at Denver during our conference this year.

Mr. SPRINGER. Now if I understand your resolution correctly, there are really two changes that you would wish in the bill. For one thing you would not limit the authority to States to establish such packaging and labeling standards as they deem necessary.

Mr. BARKER. That is correct.

Mr. SPRINGER. That is one.

Mr. BARKER. Yes.

Mr. SPRINGER. And this would apply in any case where it does not contemplate national standards.

Mr. BARKER. That is correct.

Mr. SPRINGER. Is that about right?

Mr. BARKER. That is correct.

Mr. SPRINGER. Now the second would have to do with the requirements of the declaration of contents on the label, those that should be expressed in terms of the largest whole unit to the decimal fraction rather than being restricted to ounces or whole units or pounds or pints and quarts.

Mr. BARKER. That is correct.

Mr. SPRINGER. That is correct?

Mr. BARKER. Yes, sir.

Mr. SPRINGER. That is the second change.

Mr. BARKER. Yes.

Mr. SPRINGER. Right.

Now I am not sure that I understand your No. 3, "Since the words 'accurately stated' in section 4(a)(2) could be construed under present custom and usage to allow no measurement inaccuracy whatsoever \* \* \*"

Do you recommend adding the phrase "as is consistent with good packaging practice" after the words "accurately stated"?

Mr. BARKER. This is correct.

Mr. SPRINGER. What do you mean, "as is consistent with good packaging practice"?

Mr. BARKER. Mr. Springer, I would like for your conference secretary to explain that, please.

Mr. SPRINGER. All right.

Mr. JENSEN. Mr. Springer, what the conference is attempting to reach here is that there are two errors inherent in packaging, two that must be recognized. One is the error that is part of the packaging process. Some packages are right and some over and and some under. You have involved humans and machines, neither of which is perfect.

This is one of the packaging errors that is consistent with good packaging practice.

The other relates to errors that come about because of loss in moisture after the package has been filled. Good packaging law recognizes both of these possibilities and simply limits the amount of error in either case.

Mr. SPRINGER. Does the Federal Trade Commission require that now?

Mr. JENSEN. Federal Food and Drug; yes, sir. I think the Federal Trade does not direct itself to packages specifically.

Mr. SPRINGER. Now to come back to Mr. Barker for a moment.

Mr. Barker, with these amendments you recommend this bill?

Mr. BARKER. Yes, sir.

Mr. SPRINGER. All right. Now have you had an opportunity to go into the question of cost?

Mr. BARKER. The question of cost to enforce—

Mr. SPRINGER. The application of this bill.

Mr. BARKER. No, sir; I have not. I have not considered that.

Mr. SPRINGER. Would you consider this bill to be wise if the evidence showed clearly that there would be a substantial increase in cost, and by substantial I am talking about 4 percent or more.

Mr. BARKER. I think the emphasis that industry has placed on this thing has been on odd or hypothetical cases, Mr. Springer, and that I think it has fostered industry's ridicule of the bill. From my experience in talking to different ones cost has not been a major factor with reference to this legislation.

When you say substantial 4 percent or more, I can't see it.

Mr. SPRINGER. This is my point, Mr. Barker, and I do not want to be obstreperous but, for example, when Mrs. Peterson—when she was here—said she had made no examination of costs whatever so she had no evidence on which to make any estimate to us as to whether or not prices would be stable, would go down or would go up. The fact of it is as I heard her testimony, she didn't seem to be very much interested in it.

Mr. BARKER. What I am saying, Mr. Springer, is that I have had direct relationship with over a hundred of these manufacturers' representatives and executives over the past 6 years and there have been no heated debates either in private or in open sessions relative to this cost. It has never been brought forth. Therefore, I am reminded that I would not think it would be a useful argument at this time to bring up cost as they have.

Mr. SPRINGER. Mr. Barker, that is what I am trying to find out. If you have any evidence, would you put it in the record? If you don't have any evidence, why, of course, it is all right to state that. I would not expect you to be an authority on this and I am not trying to examine you with that thought. I am just trying to find out if you have any figures or if you have any evidence which would go in the record one way or the other.

Mr. BARKER. No, as far as figures, I do not have. As far as conversation with manufacturers, yes, sir; 6 years of experience with them has told me that cost has not been a heated part of their argument.

Mr. SPRINGER. I think that is some evidence. I have been trying to find out whether or not there is going to be and I have questioned each one of these people and I have received some pretty good answers on what the cost is going to be on each one of the individual industries. Yesterday morning I thought was the best testimony we have had. Were you here yesterday morning?

Mr. BARKER. No, sir.

Mr. SPRINGER. Now the Kellogg people, who are international producers, had a factory in Mexico and another one in South Africa. One of these countries, Mexico, does not have any weights and packaging standards. The Union of South Africa does have it and it was laid out, we had a chance to get an idea of what it is about. Their testimony was that their cost of packaging in South Africa was about 51 percent more than it was in Mexico largely due to the labor; in other words, the increased costs of doing these and the packaged sizes that they wanted down there over what it was in Mexico. These are concrete figures which give you some idea of contrast between another country in this hemisphere and another country in South Africa which has had for years what is called a fair labeling and packaging bill. I think cost is one of the things we want to take into consideration in the determination of whether or not this bill ought to be enacted in the form in which it is now received.

Mr. BARKER. Most certainly I would agree with your statements, Mr. Springer. I was only stating the experience I had with these people that this cost factor had never been brought to my attention in any of the discussions we have had. If it were to be such a cost factor, most certainly Kellogg has been one who has gone to compact size in standardization of their packages and made the most of it over television ads. I think they have made more of this through the advertising media relative to the compact box that fits into the shelf and most certainly no cost was mentioned there. As to the figures, I cannot comment.

Mr. SPRINGER. Let me give you this example and see if you would think of it in the results of your cost.

In crackers they may have four to five different products—the same type of box we will say, in five packages all the same size. Now if they cut those down into, say, 8, 16, 24, and 32 ounces, if that is what you have, would you think as a result of having to make four or five different package sizes that that would increase your cost over where they produce only one package for that now?

Mr. BARKER. I have heard the word "might" used quite a lot in the testimony here and if I would say that such a thing might happen, then it might increase the cost, but I am a little bit disturbed.

Mr. SPRINGER. I am saying if that does happen, if you have to produce five separate sized packages rather than produce one size package, would you believe that would increase the cost?

Mr. BARKER. If such were the case I would suppose it would, Mr. Springer.

Mr. SPRINGER. I think it is reasonable.

Mr. BARKER. I think it is reasonable.

Mr. SPRINGER. We don't have all the answers to this, Mr. Barker, and I am not trying to be one sided but I am trying to figure down

deep enough before we go to the floor with the fair label to increase consumer cost. I think we can get this bill to where it does not do that. That is the part that bothers me. I think you have made a good statement.

Mr. BARKER. Yes, sir. I just might bring up this fact, Mr. Springer. I would not be talking about cost, most certainly I have never heard any of them tell about the cost of packaging the things put before the consumers of the United States. If you will read this book and see the pages and determine the cost of such advertising to the manufacturer and what he pays for it, how he attempts to lure the consumer into buying products only through beauty and not what is inside the package, I am sure we would be more concerned with cost than ever before and not these little things as to law enforcement and standardization of packages.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Barker, first I would like to repeat the request that you submit to this committee any evidence which you would have over the years where manufacturers have engaged willingly or not to any deception with respect to weights and measurements.

I would like to have specific examples given to the committee. You have been in this business for many years. I for one would be interested in seeing exactly where and how, and how many times you have these examples. So for the record, be sure and submit that.

Mr. BARKER. Yes, sir; we will do that.

(The information, when supplied, will be found in the committee files.)

Mr. PICKLE. Now, secondly, I want you to turn to page 4 of your testimony. You make reference to the requirement of the section 4(a)(3)(A) which you said, "should be expressed in terms of the largest whole unit or decimal fraction thereof rather than being restricted to ounces or whole units of pounds, pints or quarts. Declarations of quantities of length, area, and numerical count should be included in such requirements."

Now as far as I know this is one of the first times this declaration has been recommended or made to this committee so I am a little concerned that your organization would recommend to this committee that any labeling having not only weights but also have in it a requirement of some description of length, area, and numerical count.

Now are you saying that you ought to say there are 40 cherries in a pie?

Mr. BARKER. No, sir, not 40 cherries, only to cover those that are normally sold by length, area or numerical count. Some things are not sold by count.

Mr. PICKLE. Give me an example of what is sold by the area or numerical count.

Mr. BARKER. Let my secretary answer.

Mr. PICKLE. Either one of you. I am interested in a concrete example. This might be a little impractical.

Mr. JENSEN. First with respect to length, you take ribbon or string sold by so many inches. By area you get wrapping paper, facial tissues, aluminum foil. These things are not sold by weight or volume.

Section 4(a)(3)(A) directs itself only to those items sold in terms of weight or volume and there are many commodities that are sold otherwise.

Mr. PICKLE. A spool of thread always puts on it the length.

Mr. JENSEN. Yes.

Mr. PICKLE. Without exception. I have a lot of experience in buying spools of thread and I have worked in a store in my time. It has that label on there now.

Mr. JENSEN. Yes.

Mr. PICKLE. You are not saying then when you talk in terms of length, area, or numerical count that in a frozen food counter that a cherry pie must have 40 cherries in it?

Mr. JENSEN. No.

Mr. PICKLE. One of our colleagues testified this was a great deception because it didn't have 40 cherries, it only had 30 cherries. You would not recommend in the case of pickles that jar had so many of a certain size and a certain length?

Mr. BARKER. No, sir.

Mr. PICKLE. I am glad to hear that because I have had no criticism in all this testimony of the way pickles are put up. [Laughter.]

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Yes. Thank you, Mr. Chairman.

You stated that a hundred of the food packagers in the business had a meeting, did you not, and at this conference great strides were made to standardize or to some degree bring some order out of chaos as far as merchandising and packaging is concerned?

Mr. BARKER. Yes, sir.

Mr. NELSEN. This was on a voluntary basis, was it not?

Mr. BARKER. Well, it was on a voluntary basis but I think I have to clarify why I said that. It was the Hart bill that had been introduced.

Mr. NELSEN. It was effective?

Mr. BARKER. Yes, sir.

Mr. NELSEN. It was effective and perhaps the threat of legislation stimulated the action?

Mr. BARKER. Yes, sir.

Mr. NELSEN. That is the point you make?

Mr. BARKER. Yes, sir.

Mr. NELSEN. Now then you also named the men involved, several of the men who were serving on a committee. Have they endorsed legislation? On this first or second page you named a group of people, grocery manufacturers, canners and Speer of the International Association of Ice Cream Manufacturers. They sat on the committee but they are not necessarily recommending this legislation?

Mr. BARKER. No, sir; only the State, city, county officials vote at the national conference.

Mr. NELSEN. On page 3 you refer to a suggested amendment to the bill and your language states:

The bill is not intended to limit the authority of the States to establish such packaging and labeling standards as they deem necessary \* \* \*.

In other words, you want the bill amended so the States will retain their right to legislate as to labeling?

**Mr. BARKER.** Yes, sir.

**Mr. NELSEN.** All right. Then on the next page you then are suggesting a national standard. On page 4 at the bottom of the page you are suggesting legislation to stimulate national uniformity as to packaging. Now if you are going to have national uniformity, how are you going to have the States free to go in any direction they wish?

**Mr. BARKER.** Not at all. I think if you just read the statement there very clearly, Mr. Nelsen, I say it is my firm view that—

The guidance of the Federal Government through legislative activity is needed, and will serve the excellent purpose of providing a focal point for nationwide uniformity—first, in self-compliance, and second, in enforcement authority.

**Mr. NELSEN.** Well, what do you mean by guidance? Either you have a law or you don't have a law. I am wondering how you are going to have uniformity if we go in both directions. This confuses me.

**Mr. BARKER.** Well, the Food and Drug Administration has had these laws on the books for many years but we have no enforcement. The burden is on the States. I think it is the 50 States carrying the load and perhaps in many respects there are different viewpoints within those States, but the focal point of the Federal Government as to guidance. I believe this is the answer. I am firmly convinced that it is.

**Mr. NELSEN.** Now I take it that you are suggesting some amendments to the bill, in other words, you don't necessarily assume or indicate that the bill in its present form is exactly right, you are suggesting some changes be made and I am sure the committee will make some changes.

Now again I would want to for the record make reference to one of the points that has been repeatedly brought up about slack fill. In my questioning on page 100 of the hearings I asked the question of Mr. Cohen and Mr. Rankin responded as follows:

The authority you refer to is that conveyed in section 401 of the Food and Drug and Cosmetic Act. It authorizes a Secretary of Health, Education, and Welfare when he finds that it will promote honesty and fair dealing in the interest of the consumers, to promulgate regulations establishing, among other things, standards of fill of containers for foodstuffs.

So it seems to me that this needs to be clearly defined, that this point can be met under existing law.

I would like to also ask you how you feel about the enforcement provisions in this bill which give the Federal Trade Commission the right to issue a cease-and-desist order against a manufacturer which makes him guilty until he proves himself innocent?

Now under the rulemaking authority that will be granted to the authorities in charge, they then set up the rules and regulations which they deem to be the proper ones and you are then under them and they have the force and effect of law. Is that not true?

**Mr. BARKER.** Obviously yes, but I don't think I should comment to such an extent on the Federal laws themselves. What I have tried to say to you, Mr. Nelsen, is the fact that there are 50 States out here trying to do the same thing with little or no help at all from Washington from these very agencies that you mention.

**Mr. NELSEN.** I am not arguing that point but the point is that the Federal Trade Commission wants the authority by rulemaking and instead of proceeding on an adversary or case-by-case basis they wish

to have in their hands a set of rules under which they would issue an order to cease and desist if a processor violates the rules.

The processor in the next step must come in or is permitted to come in, as the law reads, to defend himself but he is guilty unless he has proved himself innocent.

I am fearful of such a very powerful deterrent rather than the adversary proceedings, under which we have operated in the past which in my judgment would be satisfactory. This does not mean that the bill in itself in other respects would not be applicable but I feel the enforcement procedure here is very, very severe.

Thank you.

The CHAIRMAN. The committee will have to adjourn its public hearing now until, we hope, 1:30 this afternoon. If we do not get permission to sit at 1:30 it will be 7 o'clock tonight. We hope we can come back for an hour or an hour and a half. So if you can, come at that time.

The room will be cleared at this time so we can have an executive session of the committee.

Thank you. We will see you at 1:30.

(Whereupon, at 11:50 a.m. the committee recessed, to reconvene at 1:30 p.m. the same day.)

#### AFTERNOON SESSION

Mr. GILLIGAN (presiding). The committee will come to order.

Mr. Barker, would you care to resume the stand for just a moment, please? I don't know whether any of the other members of the committee have any questions for you, but I had one.

On page 4 of your testimony, Mr. Barker, you made reference to the guidance of the Federal Government through legislative activity would serve the excellent purpose of providing a focal point for nationwide uniformity.

Did you intend by that phrase to mean uniformity of regulation or uniformity of what?

Mr. BARKER. Speaking primarily and basically of law, the regulation and enforcement.

Mr. GILLIGAN. Do you see it as a desirable end result of such regulation both State and Federal to develop eventually a standardized system of packaging throughout the country?

Mr. BARKER. Very definitely, yes.

Mr. GILLIGAN. Would you see the day when we would require across all packaging industry a certain size and shape of container for various companies?

Mr. BARKER. No. I could never see that, Mr. Gilligan.

Mr. GILLIGAN. What would you have in mind, then, in the way of standardization?

Mr. BARKER. Guidelines that we have established over the years in our national conference with our city, State, county sealers, with industry participating, not voting, of course; we have most certainly proven that there exists almost a perfect Federal-State partnership and we have relied upon the Federal Government if not for the law itself, but for the guidelines with which we enforce in our laws in the



separate States. I would like to cite one specific case without naming names. About 6 months ago, relative to the fact that we sometimes might be accused of dealing in theory and not practicality, when we condemned seven carloads of a certain commodity. Had we had these guidelines from the Federal Government through Federal legislation, so that we could work on the basis of which I am trying to stress, I don't know where that commodity would have gone to. It would not have gone over into another State that most certainly doesn't have the enforcement powers that I had nor perhaps the field crews that are on the job.

I only cite this specifically without ridiculing any industry. I would only state this as to lend force and more power to the argument that I bring up relative to the legislative activity that is needed from the Federal standpoint.

Mr. GILLIGAN. Are you familiar with the sections of the bill, sections 5 (d), (e), and (f)?

Mr. BARKER. Not from the top. Mr. Jensen has more or less taken care of the technical aspects of the bill, and if you do have a question—

Mr. GILLIGAN. What I am interested in is whether or not you believe that it is necessary or advisable for the Congress to adopt section 5 of this bill as presently written?

Mr. JENSEN. Mr. Gilligan, I think, expressing the view of the national conference on weights and measures, as these matters have been discussed over many years, there are many commodities in the retail market that lend themselves to standardization that now offer themselves in many and different varieties of weights and measures. The conference has had committees on package standardization; the committee of which Mr. Barker was chairman has worked in this direction, attempting to bring about voluntarily from the industry reasonable standards. They have worked largely without success.

There are areas that now are standardized and have been through the years, and I think one particularly resulted from effort of the industry itself. That is the flour industry. Flour is sold largely in standardized sizes, dairy products, butter, margarine, coffee largely standard, but neither the conference nor the States to this point in time have had the weapon to bring about standardization, even though they have recognized that there are many areas that are susceptible to standardization.

Mr. GILLIGAN. Has the conference suggested a list of the kinds of commodities that they thought should be covered by such standardization regulations?

Mr. JENSEN. Not to my knowledge, sir. There has been some work done with the dehydrated coffee group, and some other products, but this is on an ad hoc basis. They would talk with an industry and see whether or not they might be willing voluntarily, without the force and effect of law, to bring about standardization of their own packages, and it has been fruitless to this point.

Mr. BARKER. I think the most obvious commodity has been overlooked because it is so prominent, that is the cigarette industry. It is standardized to perfection and it has never been brought to the attention of the committee or the conferences, because it is a fact,

and this is what I think we will go into when we work with these people through such Federal guidelines as we are talking about, through the philosophy of such a bill that is being presented to this committee.

Mr. GILLIGAN. Would you look forward to the day then that every consumer commodity would be packaged like cigarettes, sold at the same price?

Mr. BARKER. I only mentioned that as the most obvious and as something that is before us.

Mr. GILLIGAN. It would seem to me an example that could not be extended very readily to the 8,000 consumer items that we find on our shelves.

Mr. BARKER. It could be 8,000, 10,000, or 12,000, and probably within 10 years, we will have 15,000 and probably 99½ out of 100 will be prepackaged.

Mr. GILLIGAN. Thank you, sir.

Mr. Nelsen, do you have any further questions?

Mr. NELSEN. I would like to pursue further the mechanics under which the Federal Trade Commission may operate and under section 7, with the assistance of this Bureau, the Commission endeavors to secure voluntary compliance with the statutes it administers by informing and guiding businessmen as to requirements of such statutes. The Bureau is comprised of three divisions. Then you have the division of Advisory Opinions, the Division of Trade Practice Conferences and Guides.

Now, has the Federal Trade Commission, have they attempted to call together businessmen to straighten out some of the problems that could be straightened out? And if I am advised properly, there has not been an attempt to the degree necessary to bring about some standardization or some rules and regulations under which to operate, and the thing that bugs me is that we pass a law to do something that we already have a law that is supposed to take care of. So passing one law on top of another one, how do you get enforcement if you cannot even get enforcement of the laws that we already have?

Mr. BARKER. I think I could not comment on any Federal law that is on the books now. I can say, Mr. Nelsen, that I have had little or no help from these Federal agencies that you speak of, the burden has been upon me as the State administrator, the same as other State administrators.

I am only saying to you and to this committee that we have a wrong, and where we have a wrong, there must be a remedy. And if the law that is on the books at the present time isn't doing the job, then I say we should get the law on the books that will do it. As I said in my statement, the philosophy is in this bill that is before this committee.

Mr. NELSEN. But if you do have laws on the books relative to, we will say, slack fill, relative to content and weights, and we have laws that can, if they are enforced, will bring all of these things to the public's attention, passing a law now to, shall we say, to make enforcing agencies do what they are supposed to do under existing law, that would be the remedy. I would say, because if we have remedies in the law that are not enforced, passing another law is not going to stimulate enforcing authority to do more if they are not already exercising the authority they now have.

Mr. BARKER. This is a matter of opinion, and I won't belabor the point. I only say the law is in the enforcement. It is only worth its enforcement. If there is a law against stealing, steal, and no one protests, then nothing is going to be done. I am saying no one has protested as to what has been done before, we are protesting now. We are advising a certain philosophy at this time. This is what I am trying to make, Mr. Nelsen.

Mr. NELSEN. But you are saying there is a law against stealing. We pass another law to say you must not steal.

Mr. BARKER. I say someone must not steal.

Mr. GILLIGAN. Mr. Chairman—

The CHAIRMAN. Along that line, Mr. Barker, how much assistance do the States really receive from the Food and Drug Administration and from the Federal Trade Commission in the area of package labeling and package quantity control?

Mr. BARKER. My viewpoint with reference to the many officials I have talked to, little, if any. I have received none in the State of West Virginia.

The CHAIRMAN. That answers the question that I think has been bothering an awful lot of people and perhaps this legislation, we hope, might take care of some of that.

Mr. BARKER. Yes, sir.

Mr. GILLIGAN. There being no further questions, thank you, Mr. Barker.

Mr. BARKER. Thank you.

Mr. GILLIGAN. Mr. Chairman, the next witness to come before the committee is Mr. Albert N. Halverstadt, vice president of advertising for the Procter & Gamble Co.

Mr. Halverstadt, will you come to the witness table and introduce your associate?

I might say to the members of the committee, it gives me some considerable pride to have the representatives of Procter & Gamble here today. This industry has long been associated with Cincinnati, and I daresay has done more to clean up the country than any other industry we know of.

Mr. Halverstadt, among other things, manages an advertising budget which in size, I suspect, is second to none in the country. So it may be some testimony to his business acumen and talents that he has this most responsible position with the very famous and long-established company, Procter & Gamble.

#### **STATEMENT OF ALBERT N. HALVERSTADT, VICE PRESIDENT- ADVERTISING, THE PROCTER & GAMBLE CO., CINCINNATI, OHIO**

Mr. HALVERSTADT. Thank you, Mr. Gilligan, you are very kind.

My name is Albert N. Halverstadt. I am vice president-advertising, of Procter & Gamble, in Cincinnati. My testimony was prepared several weeks ago. I realize that a great deal of testimony has been given in the interim. For that reason, I am going to do a little hopping, skipping, and jumping in my testimony in an effort, which I hope will not be in vain, to save some time. But I would appreciate

it if the testimony as originally written could be made a part of the record.

Mr. GILLIGAN. Without objection, that will be done.

(Mr. Halverstadt's prepared statement follows:)

**STATEMENT OF ALBERT N. HALVERSTADT, VICE PRESIDENT-ADVERTISING, THE PROCTER & GAMBLE COMPANY, CINCINNATI, OHIO**

My name is Albert N. Halverstadt. I am Vice President-Advertising of The Procter & Gamble Company. I am here from Cincinnati, Ohio, to present my Company's views on H.R. 15440, and particularly on Section 5. We consider this Section misleading and harmful to the public interest:

*Misleading:* Because the bill and its Senate predecessors have been widely publicized as a cure for a problem which we are convinced does not exist—namely, the inability of the American housewife to select and buy those products which give her the quality and satisfaction she desires.

*Misleading:* Because Section 5 overaccentuates price as a reliable measure of value. Thus, it subordinates other value attributes, such as quality, performance, convenience, flavor, and color. For many low-cost supermarket products, these other values mean far more to the housewife than price differences that are often no more than a fraction of a cent per ounce. This Section, therefore, would set a false measure of product value, and hence would mislead and disserve the consumer.

*Harmful to the public interest:* Because federal standardization would unavoidably discourage packaging and product innovations required to meet consumers' needs and desires.

*Harmful to the public interest:* Because it would force up consumer grocery bills all across the nation, thus adding to inflationary pressures. Standardization under Section 5 would unavoidably impose manufacturing inefficiencies and higher costs which, in whole or in part, would have to be passed on to the consumer in the form of higher prices.

*Harmful to the public interest:* Because federal control and restraint of industry on so sweeping a scale and in such detail could not help but work against the continued growth and vitality of our country's economy and against full employment objectives.

Mr. Chairman, for these reasons my Company is convinced that unless Section 5 is deleted from H.R. 15440, this legislation will harm consumers, not help them.

Contributing to this conviction is my Company's experience in providing the American consumer with quality products—new products and constantly improved products—over a span of 129 years.

We develop, manufacture, package, and sell scores of household products. They range from soap to prepared cake mixes, from toothpaste to paper towels, from shampoos to shortenings. These are low-cost items, intensely competitive in the marketplace. They are sold in retail stores. Housewives by the million are buying these kinds of products week in and week out. These products are intimately known, therefore, in their competitive aspects, whether performance or convenience or price, by consumers from coast to coast. When we develop such products, we must be as responsive as we can possibly be to the needs of large families and small families, adults and teenagers, farmers and stenographers—to the whole spectrum of the consuming public.

Our continuous effort to accommodate consumers taught us long ago not only that their actual needs differ, but also that their desires and tastes rapidly change. As a result, we stay in close and constant touch with consumers to learn as precisely as possible what they need and what they want, today and tomorrow, in the way of products and packages.

We use every reliable method we can find to determine and anticipate these consumer needs and preferences. Our market research program includes, for example, skilled interviewers. They are continuously moving about the country visiting hundreds of thousands of consumers in their homes each year. Also, we are constantly soliciting consumer reactions to existing and proposed products by asking many thousands of consumers to test our own and competing products in their homes.

In these many continuing personal contracts, we find no evidence at all of widespread consumer dissatisfaction with packaging and labeling which would war-

rant such far-reaching legislation as is proposed here. If there were such dissatisfactions, on any appreciable scale, the process I have just described would have revealed it—and I can assure you that we would have reacted swiftly to it, long ago.

Consumer letters, cited here by other witnesses, give us another point of contact with the public. Last year we received and answered 94,587 unsolicited letters—an average of 375 each working day, or 7,882 each month. Of these almost 95,000 letters received in 1965, just over one tenth of one percent—only 129 letters—were critical of our packaging, labeling, or promotional practices.

Mr. Chairman, I cite these facts not to depict my Company as all-knowing in the ways of the consumer. Rather, I cite them to support two positions: first, we do have a measure of experience with consumer attitudes and needs; second, this experience tells us that section 5 of H.R. 15440 is not needed, would be harmful, and therefore should not become law.

Although we are principally concerned with Section 5, I wish to comment first on Section 4. We believe that to whatever extent fraud and deception exist in packaging and labeling, the problem is due not to inadequate law but to inadequate enforcement. The federal and state governments have a host of laws now that, if enforced, provide ample protection of consumers against fraud, deception, or unfair competitive practices. Nevertheless, we have no quarrel with the apparent intention of Section 4—to reassert that product labels must include fundamental information needed by consumers.

We agree:

- that product labels should identify the product, where helpful, and give the name and address of the manufacturer;

- that net quantity statements should be prominently stated on the principal display panel;

- that net quantity statements should appear in an appropriate type size;

- that net quantity statements should be legible and distinct;

- that net quantity statements should be generally parallel, where practicable, to the base of the package;

- that deceptive qualifying expressions should be prohibited.

However, I do suggest three improvements in Section 4:

First, that the mandatory regulations required by this Section be converted into clean-cut statutory directives instead of resorting to the indirection of requiring administrative agencies to issue "regulations" to achieve the same ends.

Second, that the actual wording of existing law be used wherever possible, avoiding changes that are not clearly and substantially of real value to the consumer. The provisions of present law have been thoughtfully worded, they have been the subject of extensive litigation, they are supported by voluminous regulations. The possibility of ambiguity between the provisions of present law and the new regulations proposed under Section 4 should be avoided whenever possible.

Third, I invite special attention to Section 4(a)(8)(A) providing that the contents of packages containing less than four pounds or one gallon be expressed in ounces or in whole units of pounds, pints, or quarts. This provision directly conflicts with present federal regulations and the laws and regulations of many states. My Company was among the many companies which only recently changed the net quantity statements on packages to comply with new type-size requirements. We will redo our labels once again if this is deemed helpful enough to the consumer to justify it—which is indeed an arguable point—but we suggest that a reasonable period of time be allowed for any such change in order to avoid imposing unnecessary costs.

In sum, it seems to us that Section 4 restates principles of good packaging which should be—and in the great majority of cases are now—lived up to by industry. This Section, Mr. Chairman, is the only part of H.R. 15440 which fits the widely publicized title, "Truth in Packaging." We do question the necessity for this Section in the light of the extensive similar protections already in law, but we do not object to it.

I return now to why we believe Section 5 is ill-advised.

I stated earlier that we consider this Section misleading because the problem it purports to treat does not exist. We are convinced that the American housewife can and does perform intelligently and responsibly in the marketplace, knows what she wants, and chooses her purchases carefully.

Our years of observation of grocery store operations have told us time and time again that the consumer is not fooled, distressed, or exploited by the many shapes and sizes and varieties of packages that plead for her favor on today's supermarket shelves. Actually, in a very real sense the consumer runs the modern supermarket.

Today's supermarket operators place a high premium on every single foot of shelf space. Virtually all major grocery operators use computers to keep a very close tab on their turnover. They give their valuable shelf space only to the items which the consumer, because she buys them repeatedly, has "commanded" should be there.

I would be economic suicide for any company, such as my own, whose survival depends not on one-time purchases but on a high volume of *repeat* business, to misrepresent its products.

Consumers deceived by a package or disappointed by the product will just not buy it again. As a result, such a product is driven from the store shelves and dies.

This marketplace discipline is constant and relentless. It is this consumer whiphand over manufacturer and retailer that keeps the marketplace constantly in tune with consumer needs.

Next, I termed Section 5 misleading because it appears to us falsely premised. It suggests that comparative price per unit is the best and most important measure of relative product value. Here I refer to Section 5(d)(2). This would fix the weights or quantities in which consumer commodities could be marketed.

The object of this provision is to highlight and facilitate price-per-unit comparisons. I don't think I need to reargue that price by itself is not a reliable measure of value. Anyone who has ever done any shopping knows that two competing items can have the same per unit price, and yet one may be clearly superior in terms of quality or performance. Or, one item may cost more than the other, but still be the better buy because it is more satisfying or performs better.

Let me illustrate in another way the fallacy of relying on price per unit in making value comparisons. I have here two individual packets of fabric softener. The directions for each specify its use for one wash load. They sell for the same price in vending machines in laundromats. One contains  $1\frac{1}{2}$  fluid ounces, the other  $2\frac{1}{2}$  fluid ounces. Now, if these are compared on a cost-per-ounce basis, the  $2\frac{1}{2}$  ounce packet is obviously the better buy. But it isn't—for each is designed for one wash load of clothes. In other words, each does the same job. Here, as in thousands of other instances, cost per unit—or in this case, cost per ounce—is not a true measure of comparative value.

The emphasis of Section 5(d)(2) on price inevitably distorts value judgments. It disregards color, flavor, smell, quality, shape, and any number of other important aspects which may be key to the housewife's satisfaction. I cannot overemphasize that price per unit, while unquestionably *one* factor of value, is by itself a false standard for comparing product values. Overstressed, it will induce consumers to make poor purchases and thus will waste their money.

This price emphasis also could hurt consumers by placing a premium on sheer bulk. Bulk might simply be added to products in order to achieve more favorable price-per-unit comparisons. This would certainly be a disservice to consumers, and yet could be encouraged by this bill.

I also stated that Section 5(d)(2) is harmful to the public interest because it would standardize packages by weight. This would sharply reduce efficiency and increase manufacturing costs. Therefore, we consider Section 5(d)(2) as clearly the most damaging part of H.R. 15440, for it would do great harm to consumers by increasing their grocery bills. I would like to explain this rather carefully.

Today, detergent manufacturers use containers of uniform dimensions—here is one—to package a number of products which vary by formula, by density, and thus by weight. If product packages were standardised by weight, therefore, a great proliferation of sizes would result. Let me give you an example of this.

In this one carton my company packages nine different brands. Now, if we had to package each of these nine brands in one-pound weights, we would need these four carton sizes, rather than just one, because of density differences. If we had to package the next larger size in three-pound weights, additional pro-

liferation would occur. In the still larger size, if we had to package in five-pound weights, additional proliferation would occur. Using just this one example of standardization by weight, the number of carton sizes we would have to use to pack our major detergent brands would increase from three to eleven. I invite your attention to the photograph illustrating this. (See p. 767.)

This proliferation of package sizes would be extremely confusing to consumers. More seriously, it would greatly increase costs due to a lessening of production efficiencies. Also, it would reduce the savings which accrue from high volume buying of packaging materials and from efficiencies in storage and shipping made possible by fewer package sizes. All of these factors support my statement that weight standardization would unavoidably force up costs which in turn would have to be passed on in some measure to the consumer.

Staying with the example I have used, the cost to my Company of moving from three sizes to eleven sizes, according to the estimates of our engineering people, would be at least \$10,000,000 in the first year of changeover, and approximately \$3,000,000 annually thereafter. This estimate applies only to one part of the line of products we offer.

The Committee is aware from earlier testimony that many other industries would be forced to incur added costs and would have to share them with the public. In the aggregate, consumers would note an appreciable rise in their grocery bills, without any discernible gain.

It has been stated to your Committee that the authority conferred upon the administrative agencies to standardize weights could not be misused as I have indicated because of the "safeguards" in Sections 5(f) and 5(g). Our lawyers tell me that these provisions afford little protection, for the provisions are at best ambiguous.

Section 5(f) (3) exempts from weight standardization any package customarily used for the distribution of products of varying densities, except to the extent that its continued use is likely to deceive consumers. Now, if we assume, as your Committee has been advised, that this paragraph three would exempt products of varying densities, then it conflicts directly with Section 5(d) (2), which seeks to facilitate price comparisons by standardizing the weights of products. It seems to me that these two Sections are fundamentally irreconcilable. Furthermore, the term "customarily used" in Section 5(f) (3) could prohibit packaging innovations which may be desirable for new or existing products.

Section 5(g) requires that "due regard" be given to various harmful consequences that might result from a proposed weight standard. To be sure, "due regard" may mean one thing to a court of law; to a zealous administrator, however, it could well mean only passing thought.

Thus, we must disagree with those who have stated here that Sections 5(f) and 5(g) will protect against unwise use of the tremendous regulatory powers delegated by this bill.

Section 5 would harm the public interest in another way; by standardizing packaging, it would inhibit innovation.

Section 5(c) (5) authorizes regulations to prevent the distribution of commodities in packages of sizes, shapes, or dimensional proportions which are likely to deceive purchasers in any material respect as to the net quantity of the contents. Let me illustrate how this regulation might work.

I have here *Soaky*, a child's bubble bath. This package also serves as a toy. Who can say that a government agency might not conclude that this particular package is deceptively shaped as compared with this more conventional bubble bath package? Should small children be denied the pleasure of this package? I think not, and I suspect you think not also—but what might a "regulator" think? I do not know.

There are many other examples of packaging innovation. To cite just a few, here is a new and popular margarine package. This container for shoe polish is also an applicator. Here is a dispenser for applying wax to furniture. I could go on, but one need only to walk through a modern supermarket to observe the many and varied packaging innovations which manufacturers have developed to meet consumers' needs and desires.

Mr. Chairman, we are convinced that any legislation which would enable regulatory officials to bar the development of such innovations as *Soaky* and the others I have cited and, therefore, prevent their purchase by consumers who clearly want them, directly conflicts with the public interest.

We find Section 5 harmful to the public interest in still another way. Section 5(c) (3) in effect invites federal regulators to ban "cents-off" offers to consumers.

Cents-off promotions enable consumers to buy groceries at bargain prices. If manufacturers are prevented from offering these bargains, the weekly grocery bills of consumers will inevitably go up everywhere in the country.

Throughout history, the best-liked bargain opportunity has been the offering of immediate cash savings. Let me explain how a cents-off offer works.

First, Procter & Gamble, or another manufacturer, decides to put special promotion efforts behind the sale of a product by offering a temporary price reduction. The packages are printed with the offer: for example, "5 cents off regular price of this package." When we sell such packages to the retailer, the price per unit to him is reduced by the amount of the offer printed on the package. The retailer then reduces his normal retail price—in this case, by five cents—when he puts the product on the shelf.

In our experience, the retailer almost invariably passes along the savings to the consumer. We can't force him to do so, for we don't control retail prices. However, certain factors are at work which are highly persuasive. Over and above the fact that retailers are honest, it is to their advantage to play it straight. It is good business for a retailer to offer bargains to his customers, and he knows that competitive stores also will be offering these cents-off bargains. He knows that these offers are very popular with consumers. They promote store traffic and faster turnover of the goods on his shelves. Finally, he knows that many consumers keep close track of product prices—that they will complain and are likely to shop elsewhere if they feel they are not receiving the savings offered on the package.

Mr. Chairman, in all the testimony previously given on this subject, here and before two Senate Committees, and in all our experience with marketing consumer products, we have seen no data supporting the allegation that there is an epidemic retailer abuse of these cents-off offers. If we were not convinced that these offers were honestly handled, we would not be making these cents-off savings available to consumers. Last year, these savings amounted to more than \$25,000,000 on our products. This is a lot of money, but we believe cents-off sales are a good way to encourage customers to try our products.

Section 5(c) (3) permits the regulation of these offers—and presumably their prohibition—in order to facilitate price comparisons between competing products. Under the bill, they could be banned whether or not they are improperly used. Their across-the-board prohibition would raise grocery bills by many scores of millions of dollars. I can hardly believe the Congress would wish to authorize so grave an economic injury to consumers, particularly in the total absence of any supporting factual evidence of widespread abuse.

Next, I described Section 5 as harmful because the effect on industry of the regulations possible under Section 5(d), (e), and (f) could injure our national economy and full employment objectives. These subsections interlock in such a way as to provide a very cumbersome and, we believe, wholly unworkable procedure for establishment of "voluntary" weight standards.

Setting aside the difficulties inherent in ever achieving a standard under the "voluntary" procedure, which has been discussed by other witnesses, I think it should be noted that even should a "voluntary" standard be devised, the appropriate federal agency could still issue a regulation to which all of industry would have to abide, so long as the regulation did not vary from the "voluntary" standard.

The significant fact here is that any packaging innovation or any new product requiring a packaging weight different from a weight specified by regulation would require pre-clearance through an ad hoc committee established by the Department of Commerce, approval and publication by the Secretary of Commerce, and approval by the appropriate administrative agency. The ability of the manufacturer to give the consumer something new and different would be most seriously weakened by this regulatory labyrinth. Business would hesitate to risk the heavy expense of research and marketing if this cumbersome apparatus stood between a new product and the consumer.

It is very true that our country's economic vigor depends on the continuing ability of industry efficiently and economically to market new and improved products that will serve and please the consumer. By hindering this process—by slowing and discouraging innovation—by thus slowing the generation of new jobs and new production facilities—and by dampening the ardor of the buying public by reducing the number of new products—this legislation would inevitably adversely affect the economy and militate against full employment.



Mr. Chairman, I have given much thought to what the enactment of Section 5, viewed in its entirety, portends for the future.

Section 5 of this bill would empower government agencies to issue, from now to the end of time, packaging regulations with the full force and effect of law. No person can be certain that these agencies, changing as they do over the years, always will be endowed with the wisdom or objectivity to decree accurately what is best for the American housewife. Stated very simply, Section 5 would empower a small group in government to impose their subjective judgments on their fellow consumers. Protections against deception we wholeheartedly support, but the subjectivity of decision allowed in Section 5, and the separation of such decisions from any finding of wrongdoing in the marketplace, do seem to be an extraordinary and a most dangerous grant of power.

It is really startling to note what is involved here. Section 5 would empower federal agencies to decree package weights, sizes, and shapes for the tremendous range of products sold in the supermarket—cereals and soups, spices and baking powder, paper plates and pet food, pickles and noodles, detergents and crackers, frozen foods and cheese.

I have named only twelve; I could name hundreds more. Rather than depending on government agencies to regulate wisely such a vast assortment of products, I feel deeply that the best way to serve the American housewife is to keep strong and healthy the system which challenges each manufacturer, day in and day out, to do his dead level best to please her.

Mr. Chairman, my company appreciates that section 5 of this bill is intended to facilitate price comparisons without injuring the consumer by overburdening the manufacturing process. But, in the consumer's own interest, we must ask your Committee to reject the concept of standardization. Standardization would radically change the American marketplace, which so many in the world have come to envy and emulate, and which has brought the American people benefits unmatched any place on earth.

Mr. Chairman, we strongly urge the deletion of Section 5 from this bill.

Mr. HALVERSTADT. Thank you. I am here to present my company's views on H.R. 15440, and particularly on section 5. We consider this section misleading and harmful to the public interest.

Misleading, because the bill and its Senate predecessors have been widely publicized as a cure for a problem which we are convinced does not exist; namely, the inability of the American housewife to select and buy those products which give her the quality and satisfaction she desires.

Misleading, because section 5 overaccentuates price as a reliable measure of value. Thus, it subordinates other value attributes, such as quality, performance, convenience, flavor, and color. For many low-cost supermarket products, these other values mean far more to the housewife than price differences that are often no more than a fraction of a cent per ounce. This section, therefore, would set a false measure of product value, and hence would mislead and disserve the consumer.

Harmful to the public interest, because Federal standardization would unavoidably discourage packaging and product innovations required to meet consumers' needs and desires.

Harmful to the public interest, because it would force up consumer grocery bills all across the Nation, thus adding to inflationary pressures. Standardization under section 5 would unavoidably impose manufacturing inefficiencies and higher costs which, in whole or in part, would have to be passed on to the consumer in the form of higher prices.

Harmful to the public interest, because Federal control and restraint of industry on so sweeping a scale and in such detail could not help but work against the continued growth and vitality of our country's economy and against full employment objectives.

Mr. Chairman, for these reasons, my company is convinced that unless section 5 is deleted from H.R. 15440, this legislation will harm consumers, not help them.

Contributing to this conviction is my company's experience in providing the American consumer with quality products—new products and constantly improved products—over a span of 129 years.

We develop, manufacture, package, and sell scores of household products. These are low-cost items, intensely competitive in the marketplace. Housewives by the million are buying these kinds of products week in and week out. These products are intimately known, therefore, in their competitive aspects, whether performance or convenience or price, by consumers from coast to coast. When we develop such products, we must be as responsive as we can possibly be to the whole spectrum of the consuming public.

As a result, we stay in close and constant touch with consumers to learn as precisely as possible what they need and what they want.

We use every reliable method we can find to determine and anticipate these consumer preferences. Our market research program includes, for example, skilled investigators. I might say that some years ago, I spent more than 2 years in this department and in the course of that time, I talked to more than 5,000 women personally going door to door.

These interviewers are continually moving about the country, visiting hundreds of thousands of consumers in their homes each year. They solicit consumer reactions to existing and proposed products by asking many thousands of consumers to test our own and competing products in their homes.

In these many continuing personal contacts, we find no evidence at all of widespread consumer dissatisfaction with packaging and labeling which would warrant such far-reaching legislation as is proposed here.

Consumer letters, cited here by other witnesses, give us another point of contact with the public. Last year we received and answered 94,587 unsolicited letters. Of these almost 95,000 letters received in 1965, just over one-tenth of 1 percent—only 129 letters—were critical of our packaging, labeling, or promotional practices.

Mr. Chairman, I cite these facts to support two positions.

First, we do have a measure of experience with consumer attitudes and needs; second, this experience tells us that section 5 of H.R. 15440 is not needed, would be harmful, and therefore should not become law.

Although we are principally concerned with section 5, I would like to comment first on section 4. This section, Mr. Chairman, is the only part of H.R. 15440 which fits the widely publicized title, "Truth in Packaging." We believe that to whatever extent fraud and deception exist in packaging and labeling, the problem is due not to inadequate law but to inadequate enforcement. Nevertheless, we have no quarrel with the apparent intention of section 4—to reassert that product labels must include fundamental information needed by consumers. In fact, we have no serious objections to section 4.

Now, our written statement does, however, contain a few suggested changes in wording that we hope the committee will consider in section 4.

I turn now to why we believe section 5 is ill advised. I stated earlier that we consider this section misleading because the problem it purports to treat does not exist. We are convinced that the American housewife can and does perform intelligently and responsibly in the marketplace, knows what she wants, and chooses her purchases carefully.

Our years of observations of grocery store operations have told us time and time again that the consumer is not fooled, distressed, or exploited by the many shapes and sizes and varieties of packages that plead for her favor on today's supermarket shelves. Actually, in a very real sense, the consumer runs the supermarket.

Today's supermarket operators place a high premium on every single foot of shelf space. Virtually all major grocery operators use computers to keep a very close tab on their turnover. They give their valuable shelf space only to the items which the consumer, because she buys them repeatedly, has "commanded" should be put there.

This marketplace discipline is constant and relentless. It is this consumer whiphand over manufacturer and retailer that keeps the marketplace constantly in tune with consumer needs.

Next, I termed section 5 misleading because it appears to us falsely premised. Here I refer to section 5(d)(2).

The object of this provision is to highlight and facilitate price-per-unit comparisons. I don't think I need to reargue that price by itself is not a reliable measure of value. Anyone who has ever done any shopping knows that two competing products can have the same per-unit price, and yet one may be clearly superior in terms of quality or performance. Or one item may cost more than the other, but still be the better buy because it is more satisfying or performs better.

Let me illustrate in another way the fallacy of relying on price per unit in making value comparisons. I have here two individual packets of fabric softener. The directions for each of them specifies its use for one washload. They sell for the same price in vending machines in laundromats. One contains  $1\frac{1}{2}$  fluid ounces, the other  $2\frac{1}{2}$  fluid ounces. Now, if these are compared on a cost-per-ounce basis, the  $2\frac{1}{2}$ -fluid-ounce packet is obviously the better buy. But it isn't—for each is designed for one washload of clothes. In other words, each does the same job. Here, as in thousands of other instances, cost per unit—or in this case, cost per ounce—is not a true measure of comparative value.

Price emphasis also could hurt consumers by placing a premium on sheer bulk. Bulk might simply be added to products in order to achieve more favorable price-per-unit comparisons. This would certainly be a disservice to consumers, and yet could be encouraged by this bill.

Section 5(d)(2) is also harmful to the public interest because it would sharply reduce efficiency and increase manufacturing costs. Therefore, we consider section 5(d)(2) as clearly the most damaging part of H.R. 15440, for it would do great harm to consumers by increasing their grocery bills. I would like to explain this rather carefully.

Today, detergent manufacturers use containers of uniform dimensions—here is one. They use this uniform dimension to pack a number of products which vary by formula, by density, and thus by weight.

If product packages were standardized by weight, therefore, a great proliferation of sizes would result. Let me give you an example of this.

In this one package, my company packages nine different brands. Now, if we had to package each of these nine brands in a 1-pound weight, we would need these four carton sizes, rather than just one, because of density differences. These are the different sizes we would need to package these detergents in 1-pound weights. If we had to package the next larger size in 3-pound weights additional proliferation would occur. In the still larger size, if we had to package in 5-pound weights, additional proliferation would occur. Using just this one example of standardization by weight, the number of cartons we would have to use to pack our major detergent brands would increase from 3 to 11. I invite your attention to the photograph illustrating this. (See fig. 1.)

(The illustration referred to follows:)

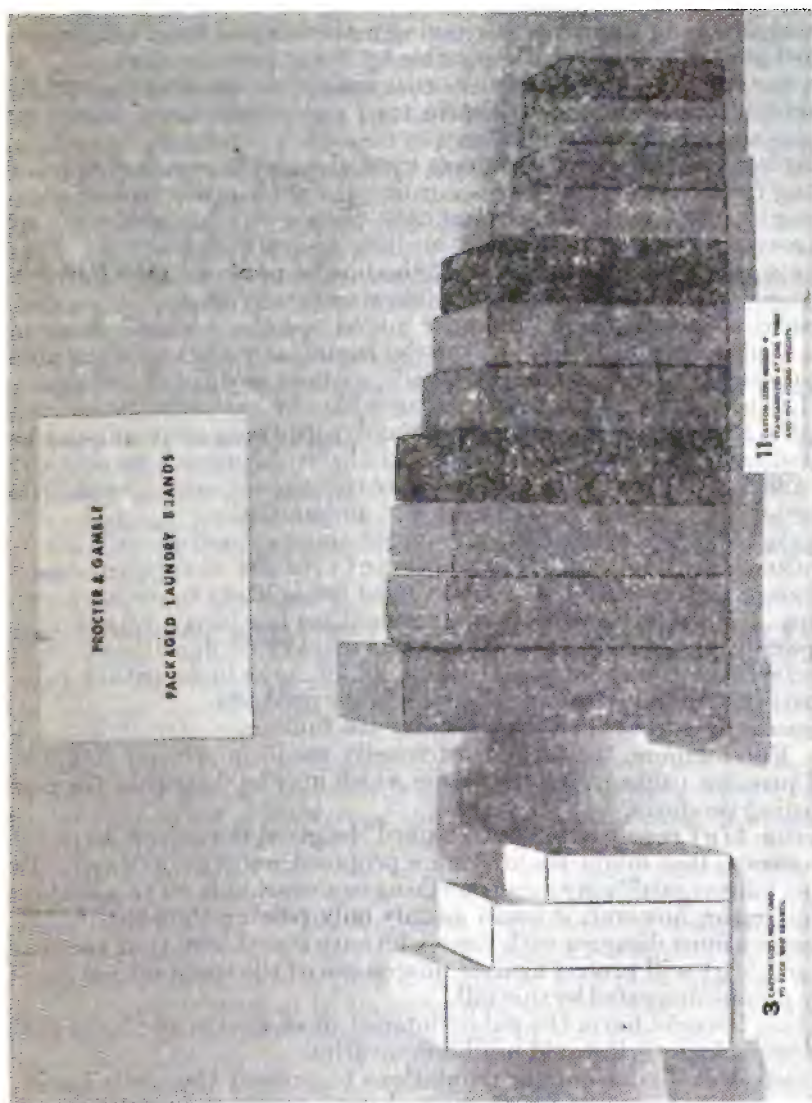


FIGURE 1

**Mr. HALVERSTADT.** This proliferation of package sizes would be extremely confusing to consumers. The proliferation would apply not only to our products, but would apply to other manufacturers extending the list to a greater extent in terms of the carton sizes. But more seriously, this would greatly increase costs due to a lessening of production efficiencies. Also, it would reduce the savings which accrue from high volume buying of packaging materials and from efficiencies in storage and shipping made possible by fewer package sizes. All of these factors support my statement that weight standardization would unavoidably force up costs which in turn would have to be passed on in some measure to the consumer.

Staying with the example I have used, the cost to my company of moving from 3 sizes to 11 sizes, according to the estimates of our engineering people, would be at least \$10 million in the first year of changeover, and approximately \$3 million annually thereafter. This estimate applies only to one part of the line of products we offer.

The committee is aware from earlier testimony that many other industries would be forced to incur added costs and would have to share them with the public. In the aggregate, consumers would note an appreciable rise in their grocery bills, without any discernible gain.

It has been stated to your committee that the authority conferred upon the administrative agencies to standardize weights could not be misused as I have indicated because of the "safeguards" in sections 5(f) and 5(g). Our lawyers tell us that these provisions afford little protection, for the provisions are at best ambiguous.

Section 5(f)(3) exempts from weight standardization any package customarily used for the distribution of products of varying densities, except to the extent that its continued use is likely to deceive consumers. Now, if we assume, as your committee has been advised, that this paragraph 3 would exempt products of varying densities then it conflicts directly with section 5(d)(2), which seeks to facilitate price comparisons by standardizing the weights of products.

It seems to us that these two sections are fundamentally irreconcilable. Furthermore, the term "customarily used" in section 5(f)(3) could prohibit packaging innovations which may be desirable for new or existing products.

Section 5(g) requires that "due regard" be given to various harmful consequences that might result from a proposed weight standard. To be sure, "due regard" may mean one thing to a court of law; to a zealous administrator, however, it could mean only passing thought.

Thus, we must disagree with those who have stated here that sections 5(f) and 5(g) will protect against unwise use of the tremendous regulatory powers delegated by this bill.

Section 5 would harm the public interest in another way; by standardizing packaging, it would inhibit innovation.

Section 5(c)(5) authorizes regulations to prevent the distribution of commodities in packages of sizes, shapes, or dimensional proportions which are likely to deceive purchasers in any material respect as to the net quantity of the contents. Let me illustrate how this regulation might work.

I have here Soaky; this is a child's bubble bath. This package also serves as a toy. Who can say that a government agency might not

conclude that this particular package is deceptively shaped as compared to this more conventional bubble package? Should small children be denied pleasure of this package? I think not, and I suspect you think not also—but what might a “regulator” think? I do not know.

There are many other examples of packaging innovation. Here are a few of them. Here is a new and very popular margarine package. It is packed in a tub instead of in stick form. Here is a shoe polish, with an applicator attached to it. Here is a dispenser for applying wax to furniture. I could go on but you only need to walk through a modern supermarket to observe the many and varied packaging innovations which manufacturers have developed to meet consumers' needs and desires.

Mr. Chairman, we are convinced that any legislation which would enable regulatory officials to bar the development of such innovations as Soaky and the others I have cited, and, therefore, prevent their purchase by consumers who clearly want them, directly conflicts with the public interest.

We find section 5 harmful to the public interest in still another way. Section 5(c) (3) in effect invites Federal regulators to ban “cents off” offers to consumers. Cents-off promotions enable consumers to buy groceries at bargain prices. If manufacturers are prevented from offering these bargains, the weekly grocery bills of consumers will inevitably go up everywhere in the country.

Throughout history, the best-liked bargain opportunity has been the offering of immediate cash savings. Let me explain how a cents-off offer works.

First, Procter and Gamble, or another manufacturer, decides to put special promotion effort behind the sale of a product by offering a temporary price reduction. The packages are printed with the offer: for example, “5 cents off regular price of this package.” This is the way the package would appear on the grocery shelf, with “5 cents off” prominently displayed.

When we sell such packages to the retailer, the price per unit to him is reduced by the amount of the offer printed on the package. The retailer then reduces his normal shelf price—in this case, by 5 cents—when he puts the product on the shelf.

In our experience, the retailer almost invariably passes along the savings to the consumer. We can't force him to do so, for we don't control retail prices. However, certain factors are at work which are highly persuasive. Over and above the fact that retailers are honest, it is to their advantage to play it straight. It is good business for a retailer to offer bargains to his customers, and he knows that competitive stores will also be offering these cents-off bargains. He knows that these offers are very popular with consumers. They promote store traffic and faster turnover of the goods on his shelves. Finally, he knows that many consumers keep close track of product prices—that they will complain and are likely to shop elsewhere if they feel they are not receiving the savings offered on the package.

Mr. Chairman, in all the testimony previously given on this subject, here and before two Senate committees, and in all our experience with marketing consumer products, we have seen no data supporting the

allegation that there is an epidemic of retailer abuse of these cents-off offers. If we were not convinced that these efforts were honestly handled, we would not be making these cents-off savings available to consumers.

Last year, these savings amounted to more than \$25 million on our products. This is a lot of money, but we believe cents-off sales are a good way to encourage consumers to try our products.

Section 5(c)(3) permits the regulation of these offers—and presumably their prohibition—in order to facilitate price comparisons between competing products. Under the bill, they could be banned whether or not they are improperly used. Their across-the-board prohibition would raise grocery bills by many scores of millions of dollars. I can hardly believe the Congress would wish to authorize so grave an economic injury to consumers, particularly in the total absence of any supporting factual evidence of widespread abuse.

Next, I described section 5 as harmful because the effect on industry of the regulations possible under sections 5 (d), (e), and (f) could injury our national economy and full employment objectives. These subsections interlock in such a way as to provide a very cumbersome and, we believe, wholly unworkable procedure for establishment of “voluntary” weight standards.

Setting aside the difficulties inherent in ever achieving a standard under the “voluntary” procedure, which has been discussed by other witnesses, I think it should be noted that even should a “voluntary” standard be devised, the appropriate Federal agency could still issue a regulation to which all of industry would have to abide, so long as the regulation did not vary from the “voluntary” standard.

The significant fact here is that any packaging innovation or any new product requiring a packaging weight different from a weight specified by the regulation would require preclearance through an ad hoc committee established by the Department of Commerce, approval and publication by the Secretary of Commerce, and approval by the appropriate administrative agency.

The ability of the manufacturer to give the consumer something new and different would be most seriously weakened by this regulatory labyrinth. Business would hesitate to risk the heavy expense of research and marketing if this cumbersome apparatus stood between a new product and the consumer.

It is very true that our country's economic vigor depends on the continuing ability of industry efficiently and economically to market new and improved products that will serve and please the consumer. By hindering this process—by slowing and discouraging innovation—by thus slowing down the generation of new jobs and new production facilities—and by dampening the ardor of the buying public by reducing the number of new products—this legislation would inevitably adversely affect the economy and militate against full employment.

Mr. Chairman, I have given much thought to what the enactment of section 5, viewed in its entirety, portends for the future.

Section 5 of this bill would empower Government agencies to issue, from now to the end of time, packaging regulations with the full force and effect of law. No person can be certain that these agencies, changing as they do over the years, always will be endowed with the



wisdom or objectivity to decree accurately what is best or the American housewife. Stated very simply, section 5 would empower a small group in Government to impose their subjective judgments on their fellow consumers. Protections against deception we wholeheartedly support, but the subjectivity of decision allowed in section 5, and the separation of such decisions from any finding of wrongdoing in the marketplace, do seem to be an extraordinary and a most dangerous grant of power.

It is really startling to note what is involved here. Section 5 would empower Federal agencies to decree package weights, sizes, and shapes for the tremendous range of products sold in the supermarket—cereals and soups, spices and baking powder, paper plates and pet food, pickles and noodles, detergents and crackers, frozen foods and cheese.

I have named only 12; I could name hundreds more. Rather than depending on Government agencies to regulate wisely such a vast assortment of products, I feel deeply that the best way to serve the American housewife is to keep strong and healthy the system which challenges each manufacturer, day in and day out, to do his dead level best to please her.

Mr. Chairman, my company appreciates that section 5 of this bill is intended to facilitate price comparisons without injuring the consumer by overburdening the manufacturing process. But, in the consumer's own interest, we must ask your committee to reject the concept of standardization. Standardization would radically change the American marketplace, which so many in the world have come to envy and emulate, and which has brought the American people benefits unmatched any place on earth.

Mr. Chairman, we strongly urge the deletion of section 5 from this bill.

The CHAIRMAN. Thank you very kindly for a very comprehensive statement. I see you have put a great deal of work into it.

Mr. Jarman, do you have any questions?

Mr. JARMAN. Mr. Halverstadt, I want to thank you for your contribution to our hearings and the very excellent presentation of your company's position on this proposed legislation.

You refer to the mandatory regulations under section 4 and you suggest that if legislation is to be passed on this, that it be in the form of clean-cut statutory directives instead of resorting to the indirection of requiring administrative agencies to issue regulations to achieve the same ends.

Mr. HALVERSTADT. Yes, sir.

Mr. JARMAN. Will your company be in a position to submit to us suggested wording of the statutory directives that might help in achieving that approach?

Mr. HALVERSTADT. We would be pleased to have that opportunity; yes, sir.

(The information requested, when supplied, will be found in the committee files.)

Mr. JARMAN. One other thing I did want to ask you to further comment on.

You refer to that part of section 4, subsection a(3)(a), that provides that the contents of packages containing less than 4 pounds of 1

gallon be expressed in ounces or in whole units of pounds, pints, or quarts.

You mention that your own company has recently changed the net-quantity statements on packages to comply with new type size requirements, but you also suggest that if any changes be made as suggested as set out in that subsection, that a reasonable period of time be allowed for any such change in order to avoid imposing unnecessary costs.

Do you take the position that the changes set forth in that subsection are not necessary, or is it your position simply that there should be delay in making such requirements?

Mr. HALVERSTADT. We don't think the changes are necessary. They contrast with various State laws and various regulations, or I should say, guidelines recommended by the National Conference on Weights and Measures, but we can adjust as may be necessary.

Mr. JARMAN. Let me ask you this: Do you not think it would be easier for the consumer in comparative buying of products to have such a contents provision expressed in ounces or in whole units of pounds, pints or quarts rather than the great variety of listings that we have on so many packages today.

Mr. HALVERSTADT. I am not quite sure how it would work.

For example, one product might be packed, say, 3 pounds if I understand this correctly, and another package might say 55 ounces; that is, another package in the same commodity line. In one case you would have pounds and in the other you would have 55 ounces, so I think that might result in some confusion. That is only a thought. That is the only thought in our mind here.

Mr. JARMAN. Thank you very much. I think you have made an excellent statement.

Mr. HALVERSTADT. Thank you, sir.

The CHAIRMAN. Mr. Springer, do you have any questions?

Mr. SPRINGER. Just one or two, Mr. Chairman.

Mr. Halverstadt, you said that it would cost you \$10 million to make a changeover and \$3 million annually thereafter. Now, this will be the cost of moving from 3 sizes to 11 sizes.

Now, what are you talking about in those 3 sizes, to 11 sizes? Which three sizes are you talking about?

Mr. HALVERSTADT. Well, we have, for example—this is the regular size. This is used by us for nine different products.

Mr. SPRINGER. You mean that size box?

Mr. HALVERSTADT. This identical-sized box is used for nine of our different detergent products. Now, if—

Mr. SPRINGER. That is the size of the box you use? Is that the size box you use for nine different products?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. You have just one size, but you put nine different products in that size?

Mr. HALVERSTADT. Yes; we call this our regular size.

Mr. SPRINGER. Your regular size?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. Now, what are your other sizes?

Mr. HALVERSTADT. We have a larger size, packed 10 packages to a carton that we call the giant size.

Mr. SPRINGER. All right, what's the third size?

Mr. HALVERSTADT. We have the size that is larger than that, called king size. That's packed in a shipping container.

Mr. SPRINGER. Is that six bars or what?

Mr. HALVERSTADT. I am sorry. Six packages of Tide, using that as an example.

Mr. SPRINGER. I see.

Mr. HALVERSTADT. Within a shipping container.

Mr. SPRINGER. You are just talking about Tide, is that right?

Mr. HALVERSTADT. No, sir; I am using Tide as an example.

Mr. SPRINGER. All right.

Mr. HALVERSTADT. And we have Tide, for example, in three sizes and we have these other detergents in these same three sizes.

Mr. SPRINGER. You are only talking about detergents now, isn't that right?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. Aren't foods included in this?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. And the regular soap business?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. Do you have other lines?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. In fact, you have spread out into a number of different products, haven't you?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. Have you made any estimate what the cost is going to be on those?

Mr. HALVERSTADT. We have used detergents as an example, because we thought it illustrated the point. If you performed standardization throughout all these other commodity lines of ours, the cost would be greater.

Mr. SPRINGER. You are the advertising man, is that right?

Mr. HALVERSTADT. Yes, sir; I am connected with advertising.

Mr. SPRINGER. All right, if you are connected with advertising, what is your budget for a year?

Mr. HALVERSTADT. I really cannot say. I have been asked that before—

Mr. SPRINGER. \$50 million or \$100 million or \$200 million or \$300 million?

Mr. HALVERSTADT. It would be, I would estimate, in excess of \$150 million.

Mr. SPRINGER. \$150 million, that's a pretty good sized company, \$150 million for advertising.

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. If you are doing that, what are your gross sales?

Mr. HALVERSTADT. Our gross sales are around \$2.25 billion.

Mr. SPRINGER. I am sorry.

Mr. HALVERSTADT. Around \$2.25 billion.

Mr. SPRINGER. In other words, you are more than a \$2 billion business?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. You have not made an estimate of what this will cost in all of your other lines?

Mr. HALVERSTADT. No, sir.

Mr. SPRINGER. All of your goods are packaged in one way or another?

Mr. HALVERSTADT. Yes, sir; I guess so.

Mr. SPRINGER. Can't you guess what this whole packaging change is going to cost?

Mr. HALVERSTADT. Sir, I think we could; it would be a tremendous job because of the great variety of products we make. We make literally scores of products—

Mr. SPRINGER. Don't you think—you tell me all about the objectives of this bill, maybe these are all valid, but that is a matter of whether or not they believe that or not here. But you certainly can give them the figures on what it is going to cost, they have to accept that.

Mr. HALVERSTADT. I have said that this estimate applies to one part of the line of products we offer. I would estimate that such standardization in our detergent products would be a big proportion of what the total cost would be throughout our line.

Mr. SPRINGER. Now, how much detergent gross sales do you have a year?

Mr. HALVERSTADT. I really don't know, sir.

Mr. SPRINGER. \$100 million, \$200 million, or \$300 million?

Mr. HALVERSTADT. Well, I would think it would be more than \$300 million, sir.

Mr. SPRINGER. More than \$300 million?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. Well, the first year if you had that, it would be \$13 million; that would be about 4 percent, wouldn't it?

Mr. HALVERSTADT. I think you are faster than I am.

Mr. SPRINGER. Well, \$10 million plus \$3 million, that's \$13 million, and \$300 million, that would be slightly over 4 percent, would it not?

Mr. HALVERSTADT. I really urge that you not put \$300 million in your mind, because I am not prepared to say that.

Mr. SPRINGER. We are not asking you to be deadlly accurate on this. I am trying to get some idea of where you are going. I don't know what proportion this was of your total business, so I could come to some sort of a percentage on what the increased cost would be.

Mr. HALVERSTADT. Now, let me try to help on that, if I may.

Mr. SPRINGER. All right.

Mr. HALVERSTADT. If I am understanding it. Just for the sake of the calculation, let's forget the \$10 million. I don't want to forget it, but let's set it aside for a moment.

The \$3 million additional yearly cost, forgetting all capital expenditures and equipment and changeover parts and all the other elements that are involved, the \$3 million increased cost of our detergents would we calculate, result in an increased price in and of itself to the retailer in the area of 2 to 3 percent, and we think that in the majority of cases on this package which is the most popular size, which is the one most bought of all our detergents, and which is generally the least priced one, could have an effect of raising the cost of this package on the retailers' shelves 1 cent in most cases.

That would be in the nature of a 3-percent increase in the cost of the product to the consumer. Does that relate to what you have in mind?

Mr. SPRINGER. Last fall I saw this product all over Africa, even women down along the stream. They were washing in the stream, using this. You drove along and see it out there. So your products are pretty well advertised.

Does this mean in Africa you are going to rise a penny, too?

Mr. HALVERSTADT. I am not prepared to say on that, sir. [Laughter.]

Mr. SPRINGER. This is your foreign sales. I don't know whether it is manufactured in this country and shipped over there, or whether it is manufactured over there. But I am giving this as an illustration we had here yesterday with corn flakes, six packages in Mexico was roughly half of what it was in South Africa, where you had a fair packaging law. Their costs in South Africa were 51 percent more, mostly labor, over what they were in Mexico on the same product, on the same size package.

Does that get over to you what I am talking about?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. All right; the cost is 51 percent more in South Africa to put out the same product in the same package, not the same; their packages are 4, 8, 12, 16, 28 ounces. But it was costing 51 percent more in the fair packaging country than it was in Mexico where you didn't have a so-called fair packaging law.

That is why I am sticking with this. This is why I am pursuing this one thing, because that is something that has never been considered by this committee and which the Government in its testimony could not offer anything on. This is the reason I hope you go back to your company and come back here with some more figures on what this is going to cost to the company, if you can.

Mr. HALVERSTADT. Do you mean internationally, sir?

Mr. SPRINGER. No; I am talking about this country. You don't have to go to Geneva or Africa to do that, but how much more it is going to cost in this country.

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. Thank you.

Mr. JARMAN (presiding). Mr. Gilligan?

Mr. SPRINGER. Could I, Mr. Chairman? Would you please send me a copy when you get them?

Mr. HALVERSTADT. Yes, sir.

Mr. SPRINGER. And I think, Mr. Chairman, I would like unanimous consent to insert that in the record at this point when it is obtained.

Mr. JARMAN. Without objection, it will be inserted at this point.

(The information requested follows:)

PROCTER & GAMBLE Co.,  
Cincinnati, Ohio, September 2, 1966.

HON. HARLEY O. STAGGERS,  
House of Representatives,  
Rayburn House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: During my testimony August 24 on H.R. 15440, Congressman Springer requested additional information on what the proposed packaging and labeling legislation could cost Procter & Gamble on its full domestic line of products if it were enacted in its present form. Mr. Springer asked that this information be inserted into the record and be sent to each of the other members of the Commerce Committee.

The information, which has been sent to Mr. W. E. Williamson for the record, is as follows:

Procter & Gamble cost analysts and engineers have re-evaluated all of the Company's product lines that would be affected by the passage of H.R. 15440. We estimate that, based on today's prices for equipment, labor, and materials, the initial cost for new equipment and equipment modifications needed to handle our current tonnage would total \$40 million. We estimate further that recurring costs to the Company thereafter would total \$13 million per year, based on today's costs.

I hope this information is helpful to you in considering this proposed legislation.

Sincerely,

ALBERT N. HALVERSTADT.

*Vice President-Advertising.*

Mr. SPRINGER. I think all the other members of the committee would like to have a personal copy in their offices, if I may say so.

Mr. HALVERSTADT. We will be pleased to furnish that.

Mr. JARMAN. Mr. Gilligan?

Mr. GILLIGAN. Thank you, Mr. Chairman.

I want to return, if I can, for just a moment, Mr. Halverstadt, to a subject that has occupied a good deal of the committee's time, and that is the purported evils of the cents-off promotion.

You have quite a variety of products produced by Procter & Gamble and sold. Do you use premiums of any kind in any of your other products?

Mr. HALVERSTADT. Yes, sir.

Mr. GILLIGAN. Which type of sales promotion do you regard as more effective, a cents-off promotion or the inclusion of premiums or coupons or something like that?

Mr. HALVERSTADT. We think cents-off promotions are more effective. Our total experience indicates that this is the kind of special offer the consumers like best, because it gives them an immediate saving.

Mr. GILLIGAN. Under which sales promotion system the use of cents-off or the use of premiums and coupons and so forth, under which of those systems would you judge cost per unit comparisons easier for the consumer?

There are two products on the shelf, two sets of products, and one has a cents-off promotion on it. The housewife is comparing the detergents. One has a cents-off and the competing product does not.

Down the shelf in, oh, prepared foods department or something like that she finds one product, say, a margarine, and next to it a competing brand of margarine with a coupon in it which will get her a couple of teaspoons.

The objective is to make a price per unit comparison. Under which sales promotion system could she make that judgment easier in your opinion?

Mr. HALVERSTADT. I think the cents-off offer would be one which would be most meaningful to her, would be the one in which she could have the most confidence in exactly what she was getting.

Mr. GILLIGAN. That would be my opinion, strictly on the basis that she wouldn't have any idea what the value of that coupon was or what the value of the teaspoons were, but she does know the value of the 5 cents off or the 6 cents off, so she's trying to compare unit prices, it seems to me, having a known quantity of money being offered to her as a promotional device is an easier thing to deal with. All of which leads me to the point that if the purpose of this legislation is to facili-

tate, as it says in the opening statement, price per unit comparison, which sales promotion practice should be encouraged and which discouraged? I don't mean to lead you down the garden path; I am trying to perhaps make a statement through you. [Laughter.]

That if this is the intent of the legislation, it seems to me that a cents-off promotion is a more legitimate operation than the offering of coupons and so forth, if the objective is to make price per unit comparisons, because under the second system—that of coupons and other premiums—I don't see how a price per unit comparison can do that.

Mr. HALVERSTADT. I think it is undoubtedly the easiest way to make price per unit comparisons. Two competing brands side by side and one has its regular shelf price and the other has a price-off indicated, and up here where the price is stamped are words "this price reflects your 5 cent saving."

Now, I think when you have that kind of comparison, it is certainly very easy for a woman to see the difference.

Mr. GILLIGAN. Well, I would agree. The thing which raised this was Mrs. Nelson gave us the pamphlet about packages and prices, and the tables are replete with examples of premiums of various kinds that are offered with products. There is nothing in this legislation which would go after that—never mind trading stamps and a few other promotional devices—and it does seem to me that one promotional device has been picked out here for special attention where others which, if they are offering benefits to the consumer, those benefits are somewhat more obscure to me, remain untouched in this legislation.

One last question along this line. On page 13 of your statement you make reference to cents-off promotions could be banned whether or not they are improperly used. That would suggest that you think it possible, at least, if not probable that cents-off promotions are from time to time improperly used.

Would you care to comment on how you think such improper uses might be eliminated from the marketplace?

Mr. HALVERSTADT. If there were a case in a commodity line where cents-off offers were improperly used, as I understand it, the Federal Trade Commission could ban the use of such offers throughout that commodity line, despite the fact that generally by manufacturers of such products they were properly used.

Mr. GILLIGAN. Under present law Federal Trade Commission has the right to ban as a deceptive trade practice, if it is being abused?

Mr. HALVERSTADT. Yes, sir.

Mr. GILLIGAN. Thank you very much. No further questions.

Mr. JARMAN. Mr. Nelsen?

Mr. NELSEN. Thank you, Mr. Chairman.

Off the record.

(Discussion off the record.)

Mr. NELSEN. You mentioned inadequate enforcement.

Now, I assume that you meant in the instances where there have been, where there is a record of, shall we say, violations, that it is your judgment that adequate enforcement could correct it if it was taken care of by present agencies that have authority to act?

Mr. HALVERSTADT. That is my understanding; yes, sir.

Mr. NELSEN. Yes; and I agree with you.

You mentioned another thing: The force and effect of law. I am glad you mentioned that, because this committee has in past sessions dealt with proposed legislation relative to antitrust laws. When the Federal Trade Commission asked for cease-and-desist authority, this committee put its foot down immediately, because under such a procedure the one charged is guilty until he has proved himself innocent. In this case the rule that would be set up under which you would proceed to merchandise your product, you would never know if in the judgment of some authority you were in violation. You would be in violation until you proved your innocence if they should make such a determination, and you would then have to go in, would you not, to prove that you could proceed. You would actually be one business establishment fighting with the Government.

Mr. HALVERSTADT. I would think that would be the case.

Mr. NELSEN. Yes. I have no more statement.

Mr. GILLIGAN (presiding). Dr. Carter.

Mr. CARTER. Do you think that probably the size and shapes of your containers would be regulated in case this law is passed?

Mr. HALVERSTADT. I cannot foresee whether they would or would not. I think they very well might be.

Mr. CARTER. You have no objection to the weight being placed on the packages?

Mr. HALVERSTADT. You mean——

Mr. CARTER. The weights of the contents?

Mr. HALVERSTADT. No; none whatever.

Mr. CARTER. You would object to them enforcing the rulings determining the size and shape of packages; is that not true?

Mr. HALVERSTADT. Yes.

Mr. CARTER. If you wanted to change the size of your packages, you would have to get permission from them for that; is that right?

Mr. HALVERSTADT. If that were in conflict with the standard, that is my understanding; yes, sir.

Mr. CARTER. That's all. Thank you.

Mr. GILLIGAN. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

I believe when the Chairman of the FTC appeared here, he stated something about his agency being in the process of conducting some hearings on investigating this cents-off promotional scheme. Has your company been contacted by the FTC in reference to this particular matter?

Mr. HALVERSTADT. The FTC has been investigating cents-off and our company, through one of its subsidiaries, has been questioned in that respect.

Mr. WATSON. They have been questioned in that respect?

Mr. HALVERSTADT. Yes, sir.

Mr. WATSON. I can see, although I may look with disfavor on this legislation, I think it is primarily just a slogan here and we have enough laws on the books now. But it has disturbed me a little bit, the proper interpretation of the cents-off, since you do not have any control over the retailer and you do not know whether the retailer, indeed, passes on the cents-off bargain and so as a consequence I can see where there may be a little room for question there as to cents-off of what?



I assume that the cents-off, since it is placed there by the manufacturer is meant to imply cents-off of the price for which this item was manufactured to retail for. Is that a correct interpretation?

Mr. HALVERSTADT. We manufacture the product, we priced it, we hoped it would be sold at a reasonable profit by the retailer to make his purchase attractive. We never know what it will be sold at.

Mr. WATSON. That is the thing that disturbs me, and I am not advocating that you have any control over the retailer, but at the same time it would appear to me that the only legitimate 3 cents or 4 cents off that you the manufacturer might give, is 3 or 4 cents off of the price for which that item was originally designed to sell for at the manufacturing or at the wholesale level. Is that not a correct assumption?

Mr. HALVERSTADT. If I understand you, we have lowered the price to the retailer or the distributor by the amount printed on the package.

Mr. WATSON. That is correct.

Mr. HALVERSTADT. Which enables that retailer to offer this package at 5 cents below the price, 5 cents in this case, below the price he normally would offer.

Now, you may offer it at 32 cents normally, or 35 cents or 36 cents, or 33 cents, and it's up to him to price the package bearing this offer, or this notice——

Mr. WATSON. Let me ask you this——

Mr. HALVERSTADT (continuing). At the indicated reduction from his regular shelf price.

Mr. WATSON. Of course, that is the desired result, the hope of the company that it would be sold at the retail level. But since you have no control over it, then perhaps there could be a ground for some misleading information in that regard.

Now, have you had your representatives in the field, those dealing directly with the retail merchant, to following through and see whether or not as a fact the 3 cents off was reflected in the ultimate retail price?

Mr. HALVERSTADT. Indeed we have, and that is the basis for my statement, that we feel that retailers are conscientiously passing along the savings indicated on the package.

Mr. WATSON. But, of course, we all realize that the little businessman is really in a pinch and it is about all he can do to keep his head above water, although they might desire to give a little lower price, the economics come into play and they have to keep the wolves away from the door.

Now, I can see that we really have a problem here and I would like to see the companies come up with something, some way of spelling it out, exactly if the 3 cents is off the manufacturer's price and hopefully that is passed on down to the retailer's level.

This thing, I could see, would be a real problem—suppose it is a new product, completely new product, and as an advertising scheme—and I can see it is a good scheme—we put 3 cents off. Then you have not had any prior price at the retail level at all, neither have you had one at the wholesale level. Do you not believe that it might be helpful in that particular case if we spell it out a little more in detail as to what this 3 cents off actually means to the consumer?

**Mr. HALVERSTADT.** In the case of the introduction of a new brand through such a bargain offer, we usually say "introductory offer, 3 cents off the after-sale price of this product."

In other words, 3 cents off the price to which it will revert.

**Mr. WATSON.** But you have found through your agency force, those actually dealing with the retailer, that these discounts are actually reflected in the price to the retailer?

**Mr. HALVERSTADT.** Without any doubt, and I can say further that frequently chains and independent supermarkets, in a bulk quantity of a cents-off offer may reduce the price more than the indicated saving and run a feature in the newspaper in order to build traffic in the store. This happens a great deal.

**Mr. WATSON.** I could see where you would have a little more control over the situation with the large chain, supermarkets, but we still have a few small neighborhood grocery stores around and it just would appear to me, without the manufacturer having any control over the retail grocer that, indeed, he could be claiming something which, in fact, the consuming public was not getting and I believe that you will agree, although your investigations may not have uncovered that, and such as that could very well happen to the public.

**Mr. HALVERSTADT.** I think that could happen. I just have to say that there is certainly in our experience nothing approaching the widespread abuse. We think this is a good promotional practice and we do feel that without any doubt it would cost consumers many millions of dollars, if such a practice had to be discontinued.

**Mr. WATSON.** I am inclined to agree with you.

One final question. Perhaps it has been asked of you earlier. Since you are a large manufacturer and you stay in close touch with the consuming public and its desires, how many complaints have you had about the public being unable to decide which is the best product and the public being confused by the situation? How many complaints have you had?

**Mr. HALVERSTADT.** I cannot say, sir. I mentioned this tremendous number of unsolicited letters we get and I have mentioned that in 1965 out of almost 95,000, only 129 had to do with cents-off or promotional complaints of one sort or another, or packaging dissatisfaction. But I don't happen to have the answer to your question.

**Mr. WATSON.** But certainly it would not be any substantial number of complaints that have reached you?

**Mr. HALVERSTADT.** Certainly not.

**Mr. WATSON.** And probably if you had any, they would be from us naive men rather than the ladies in the marketplace?

**Mr. HALVERSTADT.** I don't want to get into the battle of the sexes.

**Mr. WATSON.** We can always be on the safe side when you defend the ladies. [Laughter.]

**Mr. HALVERSTADT.** We love them.

**Mr. GILLIGAN.** There being no further question on behalf of the committee, I would like to thank you, Mr. Halverstadt, and your associates for your very helpful testimony.

**Mr. HALVERSTADT.** Thank you for the opportunity you have given us.

Mr. GILLIGAN. The next witness before the committee will be Mr. Arthur Sanders, executive secretary of the Scale Manufacturers Association.

Mr. Sanders, for the record, would you care to introduce your associates?

**STATEMENT OF ARTHUR SANDERS, EXECUTIVE SECRETARY AND COUNSEL, SCALE MANUFACTURERS ASSOCIATION, INC.; ACCOMPANIED BY KENNETH C. ALLEN, VICE PRESIDENT FOR SCALE OPERATIONS, HOBART MANUFACTURING CO.; AND ROBERT E. BELL, VICE PRESIDENT FOR ENGINEERING, TOLEDO SCALE CORP.**

Mr. SANDERS. Yes, sir. I am Arthur Sanders, executive secretary and counsel for the Scale Manufacturers Association. We have with us here two design and production engineers on computing sales; Mr. Kenneth C. Allen, vice president for scale operations in the Hobart Manufacturing Co.; and Mr. Robert E. Bell is vice president for engineering of the Toledo Scale Corp.

Mr. GILLIGAN. Thank you, sir.

You may, if you desire, reduce your statement for the record and summarize it or read it in its entirety if you would prefer, whichever you think makes the best presentation.

Mr. SANDERS. If it is satisfactory with you, I will outline it or read most of it. It is possible there may be some questions. We have some technical points concerning the bill which we think are very important to the retail food industry.

Mr. GILLIGAN. All right, sir.

Mr. SANDERS. And some things that possibly have not been brought out heretofore.

Speaking for the scale industry of the United States, the Scale Manufacturers Association, with 33 members representing some 80 percent of the scale production of the Nation, wishes to make clear that we are not here to oppose the passage of H.R. 15440, as we are in sympathy with its objectives, which parallel our efforts over many years to accurately determine and clearly present the correct weight of many items, including consumer commodities. We do feel, however, that some changes are needed to accomplish its objectives without creating more confusion and added cost for the consumer.

The problem we have discovered with respect to H.R. 15440 primarily relates to section 4(a)(3)(A), which requires that packaged consumer commodities be labeled in ounces, if less than 4 pounds, except where the commodity can be correctly labeled in whole pound units. This applies to all consumer packages except meat and poultry and their products—with certain other specific exceptions not apropos to this discussion.

This would mean a very serious change in the weighing, pricing, and labeling system presently used for random weight packaging by processors, wholesalers, and retailers. These operations utilize scales which read and print by pounds and ounces or by the pound and common or decimal fractions.

We understand that it has been stated that the act does not apply to wholesalers and retailers as they are exempted under section 3(b).

However, we call your attention to section 3(b) (1), which cancels the exemption for persons engaged in packaging or labeling of consumer commodities.

There are certain conflicting requirements.

The ounce labeling requirement would be directly the opposite of the customary system which has been used for a great many years and which is specified for foods under section 403 of the Federal Food, Drug and Cosmetic Act. Under that act, markings of  $1\frac{1}{2}$  pounds or 1.50 pounds, or 1 pound 8 ounces are required but 24 ounces is prohibited. Section 403 of the Food, Drug and Cosmetic Act permits weight labeling in either common or decimal fractions of pound units and such fractions have been in customary use for many years. Section 4(a) (3) (A) prohibits such markings as one-half pound or 0.50 pound.

Mr. WATSON. May I interrupt there at this point?

Mr. GILLIGAN. Certainly.

Mr. WATSON. At that particular point, do you think it would be easier and less confusing for the housewife going to buy 64 ounces of a commodity or to buy 4 pounds of a commodity?

Mr. SANDERS. Four pounds, definitely.

Mr. WATSON. You really believe that now?

Mr. SANDERS. Yes, sir.

Mr. WATSON. You know that is against the new thinking of the proponents of this bill, they figure it is easier to determine what you are getting in ounces, buy a half a pound of bacon, but it has been your study that perhaps the consuming public would more easily identify the amount of 4 pounds rather than 64 ounces?

Mr. SANDERS. Definitely, sir. And I think it would make confusing comparisons. I will bring this out later on.

Mr. WATSON. I agree with you, but, see, I am a little old fashioned, I am not up to date we want to change things. The public is not smart enough we are getting dumber all the time, so we get a new system of weighting these things. I agree with you.

Mr. SANDERS. Well, ever since this Nation has been a country, I think, we have priced by the pound and we have sold by the pound.

Mr. WATSON. That was before the advent of the Great Society. We have a new society now and we feel differently, excuse me.

Mr. NELSEN. Mr. Chairman, I wondered if the witness would not ad lib the remainder of the points he wishes to make. This was a quorum call and we will soon have to go to the floor. If there is something you would like to quickly go over and then if there is any questions.

Mr. SANDERS. Well, we can do that, and you have a copy of this.

(Mr. Sanders' full statement follows:)

**STATEMENT OF ARTHUR SANDERS, EXECUTIVE SECRETARY AND COUNSEL, SCALE MANUFACTURERS ASSOCIATION, INC.**

Speaking for the scale industry of the United States, the Scale Manufacturers Association, with thirty-three members representing some 80% of the scale production of the nation, wishes to make clear that we are not here to oppose the passage of H.R. 15440, as we are in sympathy with its objectives, which parallel our efforts over many years to accurately determine and clearly present the correct weight of many items, including consumer commodities. We do feel, how-

ever, that some changes are needed to accomplish its objectives without creating more confusion and added cost for the consumer.

The problem we have discovered with respect to H.R. 15440 primarily relates to Section 4. (a) (3) (A), which requires that packaged consumer commodities be labeled in ounces, if less than four pounds, except where the commodity can be correctly labeled in whole pound units. This applies to all consumer packages except meat and poultry and their products (with certain other specific exceptions not apropos to this discussion). This would mean a very serious change in the weighing, pricing and labeling system presently used for random weight packaging by processors, wholesalers and retailers. These operations utilize scales which read and print by pounds and ounces or by the pound and common or decimal fractions.

#### APPLICATION TO WHOLESALERS AND RETAILERS

We understand that it has been stated that the Act does not apply to wholesalers and retailers as they are exempted under Section 3. (b). However, we call your attention to Section 3. (b) (1), which cancels the exemption for persons engaged in packaging or labeling of consumer commodities.

#### CONFLICTING REQUIREMENTS

The ounce labeling requirement would be directly the opposite of the customary system which has been used for a great many years and which is specified for foods under Section 403 of the Federal Food, Drug and Cosmetic Act. Under that Act, markings of  $1\frac{1}{2}$  or 1.50 lb., or 1 lb. 8 oz. are required, but 24 oz. is prohibited. Section 403 of the Food, Drug and Cosmetic Act permits weight labeling in either common or decimal fractions of pound units and such fractions have been in customary use for many years. Section 4. (a) (3) (A) prohibits such markings as  $\frac{1}{2}$  lb. or .50 lb.

Other provisions of the bill which seemingly create conflicts are:

(1) Section 11. (b) provides that nothing in the Act shall be construed to repeal, invalidate, supersede or otherwise adversely affect the Federal Food, Drug and Cosmetic Act. Yet Section 4. (a) (3) (A) does adversely affect that Act in the manner just described.

(2) Section 5. (g) (4) requires that in the promulgation of regulations consideration shall be given to weights and measures customarily used, but Section 4. (a) (3) (A) itself is contrary to both custom and present law.

#### CONSUMER CONFUSION

We understand the purpose of Section 4. (a) (3) (A) is to facilitate price comparisons as provided in Section 2, an essential of which is quantity comparisons. Thus, marking in the same system seems essential and not, for example, one package marked 1 lb. 8 oz. and another 24 oz. It appears to us that the requirement of ounce marking under four pounds (except for whole pound units) is a questionable preference for the following reasons:

(1) Most consumer products are priced by the pound rather than by the ounce; for example, 59¢ per pound rather than 3.68¢ per ounce.

(2) The use of ounces below four pounds and the customary pounds and fractions above that weight would seem to confuse rather than to simplify comparisons. The large package may be 4 lbs. 2 oz., the smaller one 62 oz. This seems to complicate comparisons.

(3) While all ounces or all pounds might facilitate comparisons, Section 4. (a) (3) (A) permits even pound labeling but otherwise requires ounce labeling under four pounds. It is open to question that a consumer is better able to compare a 1 lb. quantity against a 20 oz. quantity than to compare 1 lb. against 1 lb. 4 oz. or 1.25 lb. (the system now required under the Food, Drug and Cosmetic Act). We wonder if the ounce marking requirement is a gain or a loss in simplifying comparisons for the consumer.

(4) We believe it in the consumer interest that all "consumer commodity" packaged products be labeled by weight or volume in a uniform manner. This should be done in customary units as provided under the Federal Food, Drug and Cosmetic Act and the present state laws, which in general follow the Federal Food, Drug and Cosmetic Act, and the recommendations of the National

**Conference on Weights and Measures.** This is an organization of state and local weights and measures officials sponsored by the National Bureau of Standards since 1905 whose purpose is to consider problems similar to those covered by this bill and to promote uniformity of reasonable and practical requirements for weights and measures throughout the 50 states.

#### ADDED CONSUMER COSTS

"Random weight" is a term applied to the weighing and labeling of packages of products that necessarily vary in their individual weights. Such products are meat, poultry, fish, cheese chunks, fruits, vegetables and the like where the packages cannot be adjusted to standard or uniform weights. On such packages the general practice is to show the net weight, the price per pound, and the total value of the package. While Section 10. (a) (1) presently exempts meat and poultry from the requirements of Section 4. (a) (3) (A), we can see the possibility that changes could eliminate such exemption in the future. Because the ounce marking requirement does apply to the other foods mentioned above, the Act in its present form will be very costly to suppliers and consumers.

The labeling of random weight packages is currently being performed with scales graduated in pounds and ounces or pounds and decimals; for example, 1.25 lb. The pounds and decimals were introduced in 1956 when scales were first connected to digital computers to accomplish the automatic weighing, computing and printing of labels for use on random weight packages. The elimination of ounces and use of decimals (1.25 lb.) was essential to make possible the direct multiplication of weight in pounds by price per pound to obtain total value. Consumer acceptance of decimals of pounds has been excellent due to its similarity to our decimal money system. This makes weight comparisons as simple as total price comparisons and furthermore simplifies the checking of the price calculation—these are the goals expressed in Section 2 of H.R. 15440.

If Section 4. (a) (3) (A) is applied to all foods except meat and poultry, decimal pounds and pounds and ounces will be prohibited and clerks will have to be hired to convert the indication of existing scales, such as 1.25 lb. or 1 lb. 4 oz., to ounces and fractions thereof and to hand write the result in the weight portion of the label. This added expense, which could be one to several cents per package, must be passed on to the consumer. The inevitability of human error is obvious.

Over a period of years, new special scales costing about \$5,000 each can be designed, built and sold, but these will have to supplement rather than replace present scales because of the requirement of two systems of weight declaration, Section 4. (a) (3) (A) below 4 pounds and the Food, Drug and Cosmetic Act above 4 pounds. The cost of these scales, plus the cost of the extra space that they occupy, plus the inefficiency of the double operation and occasional double weighing of packages in the 4-pound range, must be paid for by the consumer.

If the scale is presently a part of a production line using a wrapping machine and automatic label applicator, the packager will have to either duplicate the entire line or forgo the savings of automation on part of his production. An alternative would be to provide for moving the scales and printers in and out of the one line, but this takes time and wages and may be damaging to the scales.

Again, the cost of the equipment, the cost of the space, and the probable added labor cost must be passed on to the consumer. What does she get for this money?

#### RECOMMENDATIONS

We suggest that the following changes be considered :

- (1) The deletion of subsection 4. (a) (3) (A).
- (2) The modification of subsection 4. (a) (3) (A) to provide that all consumer commodities be labeled in accordance with the requirements under Section 403 of the Federal Food, Drug and Cosmetic Act.
- (3) A revision of subsection 10. (a) to provide that the term "consumer commodity" not include random weight packages.
- (4) A revision of subsection 10. (a) to provide that the term "consumer commodity" not include those packaged commodities on which the unit price such as price per pound, price per gallon, price per quart, etc. is marked on the package label as prominently as the quantity declaration.

## CONCLUSION

We sincerely believe the subject bill should be amended to—

- (1) Eliminate the conflict between sections.
- (2) Eliminate the proposed new (all ounce) system for quantity declaration which will be confusing to the consumer due to its departure from established practices and due to the proposed dual system of marking packages above 4 pounds in the customary manner and those below 4 pounds in ounces only.
- (3) Avoid the added cost of labor and expensive capital equipment which will be required for the all-ounce labeling of packages below 4 pounds.
- (4) Reconcile the bill with the customary and familiar weight marking and pricing requirements of existing laws and practices.

Our views, which we sincerely believe are in the interest of the consuming public, are respectfully submitted. We will be pleased to answer, to the best of our ability, any questions the Committee may have.

Mr. SANDERS. I would like to point out, as Mr. Watson says, that there would be confusion in the comparison of less than 4 pounds, which would have to be in ounces and those over 4 pounds, and also meats and poultry.

You have comparisons—you are setting up two systems of weight declarations here which, to my way of thinking, bear in mind there are 16 ounces to a pound, is going to make it very confusing to the consumer.

Now, this system that we have used and which was recommended this morning by the national conference has been in use for a great many years. There are a great many laws, all the laws of 50 States and the Federal Government, including the Food and Drug Act require pricing by the pound.

Now, in addition, this will add consumer cost.

The principal crux of our discussion here relates to random weights. Those are such products as meat, poultry, fish, cheese chunks, fruits and vegetables and the like.

Now, these machines—the automatic computing scales and the labeling scales—you have a copy before you of this leaflet which on the backside shows the label that is put out. It shows the net weight in pounds and decimal hundredths of a pound; it shows the total price; it shows the price per pound. That, we think, is what the committee is after in comparisons. But this machine was developed for this purpose.

Mr. NELSEN. At that point, if the rules were changed, would there not be a tremendous expense involved in redoing the machines to meet the requirements under the proposal?

Mr. SANDERS. I am glad you asked that question, because that is a part of this brief. These machines that do this job are very expensive. They cost some \$5,000 and up, each. There may be as many as 25,000 of them that are in use in retail food stores. They enable automation in the retail food market, the supermarket. They save money for the packager, because they operate up to 60 or 70 per minute with an average of about 30 per minute, packages coming off of a production line, and they give a label with all of the information.

Presumably those machines for the time being at least would continue, because you have meats and poultry that are going over them as well as these other items. So, the machines would have to continue, then there would have to be developed a device, a scale which

would do the job in ounces. There are none today which would compute in ounces and would label in ounces.

Now, all of them would not do it; some of them would do it by hand, but still machines would have to be developed to do that. They might cost as much as \$5,000 each, and in addition, you would have the capital cost of space to put in another system, similar to the system already there. You would have to have a different production line to operate.

Now, if you want me to, I will go to our recommendations. That is the crux of our argument here, that you are changing the system and destroying and making it very costly to the retail food store in marking and labeling these other products, which we estimate will cost from 1 to several cents per package, and that could be quite a good percent in some cases.

And this extra cost per pound, since they have no scales to weigh these on in ounces, what they would have to do would be manually convert the present labels—which you see the label there—over to ounces. This would also bring on the matter of pricing by the ounce, which is confusing to the consumer, who has always expected prices by the pound.

In other words, we think it is going to be costly and the consumer is going to have to pay for it.

Our recommendations and conclusions, if you will give me just a minute, we suggest that the following changes be considered—these are alternative suggestions.

1. The deletion of subsection 4(a)(3)(A).
2. The modification of subsection 4(a)(3)(A) to provide that all consumer commodities be labeled in accordance with the requirements under section 403 of the Federal Food, Drug, and Cosmetic Act.
3. A revision of subsection 10(a) to provide that the term "consumer commodity" not include random weight packages.
4. A revision of subsection 10(a) to provide that the term "consumer commodity" not include those packaged commodities on which the unit price such as price per pound, price per gallon, price per quart, et cetera, is marked on the package label as prominently as the quantity declaration.

You see, that is marked on the label here.

In conclusion, we sincerely believe the subject bill should be amended to:

1. Eliminate the conflict between sections.
2. Eliminate the proposed new all-ounce system for quantity declaration which will be confusing to the consumer due to its departure from established practices and due to the proposed dual system of marking packages above 4 pounds in the customary manner and those below 4 pounds in ounces only.
3. Avoid the added cost of labor and expensive capital equipment which will be required for the all-ounce labeling of packages below 4 pounds.
4. Reconcile the bill with the customary and familiar weight-marking and pricing requirements of existing laws and practices.

Thank you very much.

Mr. GILLIGAN. Do you have any questions?

Mr. NELSEN. No.



Mr. GILLIGAN. We can return later.

Mr. NELSEN. I have no questions. Off the record.

(Discussion off the record.)

Mr. SANDERS. This is a very serious proposition for the retail food industry of the United States.

Mr. GILLIGAN. Thank you very much, Mr. Sanders, for your testimony, and the committee will be in recess until 3:30. If we are lucky, we will get some people back here to hear the other two witnesses who are scheduled for today.

Mr. SANDERS. These gentlemen have airline reservations; they were in hopes that they could make them, but if you want them back here——

Mr. GILLIGAN. I don't think it is necessary for them to come back. I think your testimony was very good, very clear, and I think you are free to go now if you are pleased to do so.

Mr. SANDERS. These gentlemen can answer technical questions; they are two of the best scale design and production engineers in the United States, and if there are technical questions about these machines, why, they can certainly answer them.

Mr. GILLIGAN. I see no indication that there are such questions and if there were, I think we can probably apply to you and get the answers in writing for the committee.

Mr. SANDERS. Fine, thank you. I will be here at 3:30.

(Whereupon, at 3:10 p.m. a brief recess was taken.)

Mr. GILLIGAN (presiding). Next we have Mr. R. L. Cheney, executive director and general manager of the Glass Container Manufacturers Institute.

Would you care, Mr. Cheney, to introduce your associate for the purposes of the record?

**STATEMENT OF R. L. CHENEY, EXECUTIVE DIRECTOR AND GENERAL MANAGER, GLASS CONTAINER MANUFACTURERS INSTITUTE; ACCOMPANIED BY JAMES A. SPRUNK, COUNSEL**

Mr. CHENEY. Yes. I would like to introduce Mr. James A. Sprunk, our counsel, who is sitting here with me.

Mr. GILLIGAN. Mr. Cheney, I will say the same thing we have said to some of the other witnesses. At your option you may either submit your testimony for the record and summarize it or if you prefer to read it in its entirety, just as you please.

Mr. CHENEY. Thank you, Mr. Chairman. I would like to submit it for the record and summarize it to save the committee's time.

Mr. GILLIGAN. Without objection your statement will be accepted for the record.

(Mr. Cheney's full statement follows:)

**STATEMENT OF R. L. CHENEY, EXECUTIVE DIRECTOR AND GENERAL MANAGER, GLASS CONTAINER MANUFACTURERS INSTITUTE**

This is my third opportunity to present to the Congress the views of the members of our Institute regarding the "Fair Packaging and Labeling" legislation. Without question this shows a considerable amount of indulgence on the part of the Congress, and particularly of the members of this Committee, for which we are indeed very grateful. But beyond demonstrating the indulgence of this Committee, my appearance today after having presented our views to both the

Judiciary and Commerce Committees of the Senate<sup>1</sup> is, I believe, strong evidence of our genuine concern with respect to certain of the provisions which are included in some or all of the bills presently under consideration.

It is my understanding that the bills principally under consideration are H.R. 15440, introduced by the Chairman of this Committee, and S. 985 as passed by the Senate. While my remarks will be addressed primarily to H.R. 15440, for the most part they will apply also to the generally similar provisions contained in S. 985 and the other bills.

Before commenting on the bills themselves, I would like to mention a few background facts about our Institute. It is a non-profit corporation comprised presently of 65 member companies, most of which manufacture glass containers. The balance of the membership consists of manufacturers of closures and suppliers of raw materials, machinery and equipment. In 1965 our members produced more than 85% of all glass containers made in this country; more than 24 billion containers having a value of about \$1,000,000,000.

Our glass container manufacturing members employ over 56,000 persons in 87 plants located in 24 states. That our members' employees share our concern over those provisions of the bills to which we object is shown by the fact that the two AFL-CIO affiliated unions which represent a majority of these employees have expressed their opposition to such provisions in formal statements submitted to both the Judiciary and the Commerce Committees on the Senate.<sup>2</sup>

The specific provisions of H.R. 15440 which cause us the greatest concern are those contained in Section 5(c)(5), authorizing regulations controlling the sizes, shapes, and dimensional proportions of packages, and Section 5(d), authorizing regulations controlling the weights or quantities in which packaged products could be sold. As I will point out later, we are also concerned over the conflict between state and federal law which would appear to be inevitable if Sections 4(a)(3), 4(b) and 12 are enacted in their present form.

We oppose Sections 5(c)(5) and 5(d) because we deem them wholly unnecessary to protect consumers from deception; because they are not administratively feasible; because they would be detrimental rather than beneficial to consumers; and because they would result in unnecessary hardship on package users and package manufacturers.

The expressed sole purpose of Section 5(c)(5) is to prevent retail purchasers of packaged consumer commodities from being deceived as to the net quantity of the contents of such packages. Unfortunately, anyone voicing opposition to a provision the expressed purpose of which is to prevent deception, runs the inherent risk that his occupation may be misconstrued. In fact, when I last appeared before the Senate Commerce Committee, I was accused of being "against any kind of regulation of marketing practices" and of wanting "to have carte blanche to run the packaging and sales promotions" the way I want to.<sup>3</sup>

Let me assure you that if this were so I would not be here. In the first place, federal laws already exist which very clearly and very properly prohibit all "deceptive acts or practices in commerce"<sup>4</sup> as well as the use of any food, drug or cosmetic container "so made, formed, or filled as to be misleading."<sup>5</sup> Second, our Institute has for a number of years participated very actively, in cooperation with The National Conference on Weights and Measures, in the development and adoption of uniform state regulations pertaining to packaging and labeling requirements. We believe that the work of the National Conference and our efforts in this regard have benefited consumers and businessmen alike.

<sup>1</sup> Printed at pages 424-33, Part 1, Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, 88th Congress, 1st Session, Pursuant to S. Res. 56 on S. 887 (hereinafter referred to as the "1963 Hearings on S. 887"), and at pages 397-417, Hearings before the Committee on Commerce, United States Senate, 89th Congress, 1st Session, on S. 985 (hereinafter referred to as the "1965 Hearings on S. 985").

<sup>2</sup> The statements on behalf of the 30,000 members of the American Flint Glass Workers' Union of North America, AFL-CIO, are printed at pages 750-61, Part 2 of the 1963 Hearings on S. 887, and at pages 742-45 of the 1965 Hearings on S. 985. The statements on behalf of the 70,000 members of the Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, are printed at pages 772-73 of the 1963 Hearings on S. 887, and at pages 738-39 of the 1965 Hearings on S. 985.

<sup>3</sup> 1965 Hearings on S. 985 at page 410.

<sup>4</sup> Federal Trade Commission Act § 5(a)(1), 15 U.S.C.A. § 45(a)(1).

<sup>5</sup> Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. § 343(d), § 352(1), § 362(d).

But there is an even more powerful force than either state or federal laws against deception. No federal worker, commission or other agency, no matter how well intentioned, could possibly do the job of controlling business as does the American housewife. She votes for or against a product with her purchases, and the message comes through to the businessman loud and clear. No business can possibly succeed based on deceiving its customers. Good will is a most important asset in any business, but particularly in a business which sells packaged consumer commodities where repeat purchases are essential for competitive survival. Wholly apart from legal requirements, we have a vital interest in seeing that the consumer gets a fair deal and the most for his money.

Our opposition to Section 5(c) (5), therefore, does not stem from a desire to have "carte blanche" or freedom from any and all regulation of marketing practices. Rather our opposition is based on our conviction that regulation of package sizes and shapes is neither a necessary nor a desirable means of preventing consumer deception.

It is unnecessary because, with a properly filled and adequately labeled container, no consumer can be deceived as to the quantity of contents, regardless of the size, shape, or dimensional proportions of the package—*provided only* that she will read the label. If she won't look at the label, no amount of government regulation of package sizes and shapes can possibly protect her. She not only won't know how much product is in the package; the chances are she won't even know what the product is, unless the package is transparent. It is the label, not the size or shape of the package, which protects against deception.

We regard Section 5(c) (5) as undesirable because compulsory standardization of package sizes and shapes would severely limit consumer choice, inhibit innovation, and restrict the competitive capabilities of package manufacturers and producers of consumer commodities. The many different sizes, shapes, and styles of packages found on supermarket shelves are there because of the different and changing needs and desires which consumers have expressed in their daily purchases of packaged products.

Container shape and design help to satisfy consumer desires for packages that provide greater ease in handling. A bottle with an indented mid-section is easier to handle, particularly with wet hands, than one with straight sides, although it might have the appearance of being larger. A tall, straight side bottle may appear to be larger than a shorter one having a greater diameter. Is the taller bottle to be banned as deceptive because it may look larger than the other one? Would the shorter one also be banned if a still shorter bottle is used for a competing product? Certainly a package should not be regarded as deceptive because its dimensions or shape give it an appearance of being larger than another, differently shaped package which holds the same net quantity of contents. Otherwise, there could be no stopping place short of banning all shapes except the single one which has the appearance of being smallest.

We are confident that the Congress does not intend any such result. But the fact remains that if it is intended to permit the continued use of various styles and shapes of containers—and we certainly hope that this is the intent—then the consumer must rely on the label, not on the appearance of the container, in order to know the net quantity of contents.

There is also a pertinent question which remains and which troubles us. If the purpose of Section 5(c) (5) is not to authorize regulations banning as deceptive those packages which may appear to be larger than others holding the same quantity, what purpose is that Section intended to serve? It is a matter of real concern to us that the agencies who are given authority to issue regulations might well interpret Section 5(c) (5) as authorizing stringent standardization of package sizes, shapes and dimensional proportions.

Forced standardization of packages would also inhibit innovation. The development and promotion of new products and new packages is an important facet of competition in consumer packaging. Freedom to innovate in package design is particularly important to new and small businesses, which often need a distinctive package to gain acceptance for new products in competition with older established lines.

Development of new products often leads to development of new packages, and at times package innovation has led to new products or new product formulations—for example, glass jars, plastic squeeze bottles, roll-on applicators, and aerosols are all used for various forms of deodorants. Extensive package regulation, such as this bill appears to authorize, would inevitably tend to put a

damper on packaging innovations and new product development. Businesses, particularly small or new ones, would hesitate to invest money in a package that might be "killed in Washington".

Of particular importance to our Institute and its members is the effect which package standardization would have on their ability to compete with manufacturers of other types of packages. Vigorous competition exists between various types of packaging materials, such as glass, metal, plastic, paper, and even such flexible wraps as cellophane and polyethylene. This competition has led to technological advances in each sector; all of which ultimately benefit consumers in the form of greater convenience, wider choice, and lower costs.

Principal among the packages which compete with glass containers are metal cans. Not only are cans lighter, which means lower freight costs, but in most cases they are cheaper than glass containers. Our principal advantage is that glass can be molded into an infinite variety of container sizes and shapes. This, combined with great production flexibility, is what enables our members to compete effectively with can manufacturers. Government controls limiting packages to standardized sizes, shapes, and designs—and thus inhibiting our ability to satisfy consumer desires for convenience, utility, and beauty, and packer demand for sales appeal—would threaten our very competitive survival.

We submit that the provisions contained in Section 5(c) (5) are neither necessary nor desirable for consumer protection, but on the contrary can only operate to the detriment of consumers and businessmen alike. As I am sure the Committee members are aware, provisions generally similar to those in Section 5(c) (5) of H.R. 15440 were included in S. 985 when it was introduced in the Senate, but fortunately were deleted prior to its passage by the Senate. We respectfully urge this Committee to follow a similar course.

Turning to Section 5(d), this would delegate broad discretionary authority to the agencies to issue regulations prescribing the particular weight or quantity in which any consumer commodity could be sold, if it determined that the existing weights or quantities in which such commodity was being sold "are likely to impair the ability of consumers to make price per unit comparisons." While the obvious purpose of this Section is to benefit consumers, and primarily in an economic way, actually it will cost consumers many millions of dollars annually.

The main element of such added costs would be the considerable expense of converting plants and equipment to comply with whatever packaging regulations might be established for the wide range of products encompassed by the term "consumer commodities".

For example, a great portion of the "pack" of fruits and vegetables harvested in California is packaged in the same size container. These different varieties of fruits and vegetables have different densities, with the result that the net weight of the packaged product will vary depending upon the particular fruit or vegetable being packed. Another well known example is baby foods, where the same size jar is used to pack anywhere from 20 to as many as 50 different varieties having different densities.

If the agency thought it would facilitate price per unit comparisons, it might propose regulations limiting the packaging of fruits and vegetables to 8 and 12 ounce quantities and baby foods to, say, 4 ounces. In view of the differing densities, a number of different size containers would be required to conform to such regulations, whereas previously a single size was used. This, in turn, would require each packer not only to maintain an inventory of a number of different size containers but to make costly changes in its packaging lines to accommodate these different container sizes, all of which would result in substantial increases in production, inventory, labor, and other costs.

In addition, the economies of long production runs by container makers would be sacrificed, resulting in higher unit costs and prices. Then too, there would be the substantial costs which would be incurred by a packer who previously was packing in, say, 6 ounce quantities who had to switch to 8 or 12 ounces. Ultimately, of course, such costs would be reflected in higher prices to consumers.

There is also the question whether consumers' interests would be served by limiting the pack to 8 and 12 ounce quantities. The fact is that it is a convenience to different classes of consumers to have products available in a wide range of sizes and quantities. What is a convenient quantity differs depending upon such factors as the size of the family, its buying habits, availability of storage, and the like.

In my prior statements to the Senate Judiciary and Commerce Committees, these matters were pointed out, and I am pleased to see that consideration has

been given to them in Sections 5(f) and (g) in both S. 985 and H.R. 15440. In this connection, however, I am at a loss to understand why the application of Sections 5(f) and (g) is limited in H.R. 15440 to the promulgation of regulations under Section 5(d), rather than also being made applicable to other regulations to which they would obviously pertain.

Underlying Section 5(d)—indeed its only purported justification—is the assumption that regulations limiting the weights or quantities in which consumer commodities may be sold will materially facilitate price per unit comparisons by consumers. We submit that so long as retailers remain free to price their products as they please—which they certainly should remain free to do—this is a most unrealistic assumption.

Let us assume regulations were adopted strictly limiting the quantities of a given product to 8 and 12 ounce quantities. Let us further assume that Brand A is packed in the 8 ounce size and Brand B in the 12 ounce size. Having freedom to price as he pleases, the retailer decides to sell the 8 ounce size of Brand A at 3 for 79 cents and Brand B in the 12 ounce size at 3 for \$1.17. Would anyone seriously suggest that the average housewife could, without pencil and paper, quickly determine which brand and size offered the lowest price per ounce? The fact is that no regulation stopping short of requiring retailers to post the price per ounce or per unit for each consumer commodity can possibly give any measure of assurance that such price comparisons will be facilitated.

The plain fact is that Sections 5(c) and 5(d) both threaten great harm to consumers and businessmen alike, with not countervailing benefit to either of them. We do not seek "carte blanche" freedom from all regulation of marketing or labeling practices, but we do oppose excessive and needless restrictions upon the freedom of businessmen to compete fairly for consumer patronage.

Finally, I would like to ask the Committee to give consideration to what appears to us will be an inevitable conflict between state and federal law if Sections 4(a) (3), 4(b) and 12 are enacted in their present form. As I mentioned previously, the National Conference on Weights and Measures, sponsored by the National Bureau of Standards, has worked for a number of years in cooperation with the various states in securing uniformity in state weights and measures laws. As a result of this work the National Conference has adopted a Model State Regulation pertaining to packages and marking requirements, and a number of states have adopted regulations in conformity therewith.

Unfortunately, the provisions of Section 4(a) (3) of H.R. 15440 appear to be in irreconcilable conflict with those contained in the Model State Regulation. Section 4(a) (3) requires the statement of net weight or fluid volume of any package under 4 pounds or 1 gallon to be expressed "in ounces or in whole units of pounds, pints, or quarts (avoirdupois or liquid, whichever may be appropriate)." In other words, the quantity statement for a package containing 20 fluid ounces of product would have to be expressed as "20 liquid ounces". Under the Model State Regulation, however, such quantity would have to be expressed as "1 pint 4 ounces".<sup>4</sup>

Another area of conflict is in the expression of fluid volume. Under H.R. 15440 the required designation appears to be "liquid ounces", whereas under the Model Regulation the designation "fluid ounces" is to be used.

Since both the Model Regulation and H.R. 15440 contain provisions permitting supplemental statements of quantity designation, it might be thought that compliance with each could be achieved by having two quantity statements; one complying with federal and the other with state law. However, under Section 4(b) of H.R. 15440 such supplemental statements are permitted only "at other places on the package" than the principal display panel; whereas under Section 6.1 of the Model State Regulation any quantity statement meeting its requirements must "appear on the principal display panel of the package", and under Section 3.7.1. thereof no supplementary declaration may be "more prominently displayed than the required quantity declaration".

<sup>4</sup> Section 3.4 of the Model State Regulation states that when "the term 'ounce' is employed in a declaration of quantity, the declaration shall identify the particular meaning of the term by either of the qualifiers 'avoirdupois' or 'fluid' \* \* \*." Section 3.5 states that the "declaration of quantity shall be expressed in terms of the largest whole unit of weight or measure (for example, 1 quart shall be expressed as '1 quart' and not as '2 pints' or '32 fluid ounces')." However when this results in a whole number and a fraction, the fraction may be expressed in its equivalent in the next smaller whole unit (for example, 1½ quarts may be expressed as '1 quart 1½ pints' or '1 quart 1 pint 8 ounces,' but not as '1 quart 24 ounces'; 1¼ pounds may be expressed as '1 pound 4 ounces') \* \* \*."

Section 12 of H.R. 15440 states the intent of Congress that this Act will supersede any and all state laws insofar as they provide for labeling the net quantity of contents of the package of any consumer commodity covered by the federal Act which differ from the requirements of Section 4 of the federal Act or regulations promulgated pursuant thereto. Since the federal Act would apply only to consumer commodities distributed in interstate commerce, it would not supersede any state law so far as concerns distribution solely within that state's boundaries.

Wholly apart from the dilemma of being unable to comply with both state and federal laws requiring different expressions of quantity declarations, there would be a very heavy expense merely in changing the form of quantity declarations to bring them into compliance with the federal law. Many glass containers have the label information, including quantity declaration, either blown into—that is, molded or embossed on—the glass surface, or permanently applied thereto by means of fired ceramic labels, sometimes referred to as "applied color lettering" or "ACL". In the case of blown lettering, the metal molds used to form the containers are carved with the necessary lettering.

Our members have just completed a very extensive and costly program of making the necessary changes in their molds and in their ACL designs to bring them into compliance with the Model State Regulation. Our best estimate is that it would cost more than \$1,500,000 to weld and recut the molds and to produce new ACL designs simply to bring the quantity declarations into compliance with the regulations which the agencies would be required to promulgate under H.R. 15440.

Moreover, the cost of making these changes is only a part of the problem. One of our members has informed us that if every one of its employees who has the requisite skill to make the necessary mold changes were put to work exclusively and for a full 7½ hours a day simply on making such mold changes, it would take two years to bring its molds into compliance with the form of quantity declaration required under the present wording of Section 4(a)(3).

We see no reason why a federal law should require a different form of quantity declaration than that required by state laws. This would seem to be particularly true where, as here, the federal government has played a leading role in securing the adoption of the Model State Regulation. We respectfully urge, therefore, that Section 4(a)(3) of H.R. 15440 be amended so as to conform with the requirements of the Model State Regulation.

In the interest of conserving time, I have pointed my comments at the particular sections which appear to most directly affect the members of our Institute. I am sure that others who are more directly involved with labeling matters than we are will or have provided this Committee with much helpful information concerning the various other sections of the bills.

In closing, allow me to express our appreciation for this opportunity to express our views. I hope they will be helpful to the Committee in its consideration of this very important legislation.

Mr. GILLIGAN. You may proceed, sir.

Mr. CHENEY. Thank you, sir.

First I want to express my appreciation for the opportunity of being here and to tell you just briefly about our association.

Our members employ over 56,000 persons in the 87 glass container plants located in 24 States. I would like to point out that our employees share our concern about certain provisions of H.R. 15440 which we oppose. This is evidenced by the fact that two AFL-CIO affiliated unions representing an overwhelming majority of these employees have filed formal statements in the Senate in opposition to the similar bill, Senate bill 985.

We oppose sections 5(c)(5) and 5(d). In regard to 5(c)(5) the express purpose is to prevent retail purchasers from being deceived as to the net quantity of the contents of such packages. Unfortunately, anyone voicing opposition to provisions the expressed purpose of which is to prevent deception runs the inherent risk of being miscon-

strued but this matter is of such importance to us that I must take that risk.

Now as to section 5(c)(5), in the first place we believe Federal laws already exist which very clearly and very properly prohibit "all deceptive acts or practices in commerce" as well as the use of any food, drug, or cosmetic container "so made, formed, or filled as to be misleading."

Second, our institute has for a number of years participated very actively, in cooperation with the National Conference on Weights and Measures, in the development and adoption of uniform State regulations pertaining to packaging and labeling requirements. We believe that the work of the national conference and our efforts in this regard have benefited consumers and businessmen alike.

Further, we believe strongly that no business can possibly succeed based on deceiving its customers. Goodwill is most important and no business can continue without repeat purchases. We have a vital interest in seeing that the customer has a fair deal and receives the most possible for his money if we are going to continue in business.

We feel section 5(c)(5) is unnecessary because with a properly filled and adequately labeled container no consumer can be deceived as to the quantity of contents regardless of the size, shape, or dimensional proportion of the package provided only that she read the label. If she won't look at the label, no amount of government regulation of package size can possibly protect her and she will not only not know how much product there is but probably won't know the product itself unless the package is transparent. It is the label then, not the size or shape of the package, which protects against deception.

Now compulsory standardization of package sizes and shapes as provided in 5(c)(5) would limit consumer choice, inhibit innovation, and restrict the competitive capabilities of package manufacturers and producers of consumer commodities. The many different sizes, shapes, and styles of packages found on supermarket shelves are there because of the different and changing needs and desires which consumers have expressed in their daily purchase of packaged products.

Container shape and design help to satisfy consumer desires for packages that provide greater ease in handling. A bottle with an indented midsection is easier to handle, particularly with wet hands, than one with straight sides, although it might have the appearance of being larger. A tall, straight side bottle may appear to be larger than a shorter one having a greater diameter. The question is, is the taller bottle to be banned as deceptive because it may look larger than the other one? Would the shorter one also be banned if a still shorter bottle is used for a competing product?

Certainly a package should not be regarded as deceptive because its dimensions or shape give it an appearance of being larger than another, differently shaped package which holds the same net quantity of contents. Otherwise, there could be no stopping place short of banning all shapes except the single one which the appearance of being smallest.

We are confident that the Congress does not intend any such result. But the fact remains that if it is intended to permit the continued use of various styles and shapes of containers—and we certainly hope

that this is the intent—that the consumer must rely on the label, not on the appearance of the container, in order to know the net quantity of contents.

Now if the purpose of section 5(c)(5) is not to authorize regulations limiting or despoiling those packages which may appear to be larger than others holding the same quantity, the question is, what purpose is that section intended to serve? It is a matter of real concern to us that the agencies who are given authority to issue regulations might well interpret section 5(c)(5) as authorizing stringent standardization of package sizes, shapes, and dimensional proportions.

Forced standardization of packages would also inhibit innovation. The development and promotion of new products and new packages is an important facet of competition in consumer packaging. Freedom to innovate in package design is particularly important to new and small businesses, which often need a distinctive package to gain acceptance for new products in competition with older established products.

Extensive package regulation, such as this bill appears to authorize, would inevitably tend to put a damper on packaging innovations and new product development. Businesses, particularly small or new ones, would hesitate to invest money in a package that might be "killed in Washington."

Of particular importance to our institute and its members is the effect which package standardization would have on their ability to compete with manufacturers of other types of packages.

Our principal advantage is that glass can be molded into an infinite variety of container sizes and shapes. This, combined with great production flexibility, is what enables our members to compete effectively with can manufacturers, for example. Government controls limiting packages to standardized sizes, shapes, and designs—and thus inhibiting our ability to satisfy consumer desires for convenience, utility, and beauty, and packer demand for sales appeal—would threaten our very competitive survival.

Now as to section 5(d), while the obvious purpose of this section is to benefit consumers, and primarily in an economic way, actually it will cost consumers many millions of dollars annually. The main element of such added costs would be the considerable expense of converting plants and equipment to comply with whatever packaging regulations might be established for the wide range of products encompassed by the term "consumer commodities."

There is also the question whether consumers' interests would be served by limiting any given product to a limited number of sizes. Take, for example, 8- and 12-ounce quantities. The fact is that it is a convenience to different classes of consumers to have products available in a wide range of sizes and quantities. What is a convenient quantity differs depending upon such factors as the size of the family, its buying habits, availability of storage and the like.

Underlying section 5(d)—indeed its only purported justification—is the assumption that regulations limiting the weights or quantities in which consumer commodities may be sold will materially facilitate price per unit comparisons by consumers.

Let us assume regulations were adopted strictly limiting the quantities of a given product to 8 and 12 ounce quantities. Let us further



assume that brand A is packed in the 8 ounce size and brand B in the 12 ounce size. Having freedom to price as he pleases, the retailer decides to sell the 8 ounce size of brand A at 3 for 79 cents and brand B in the 12 ounce size at 3 for \$1.17. Would anyone seriously suggest that the average housewife could, without pencil and paper, quickly determine which brand and size offered the lowest price per ounce? The fact is that no regulation stopping short of requiring retailers to post the price per ounce or per unit for each consumer commodity can possibly give any measure of assurance that such price comparisons will be facilitated.

Finally, I should like to ask the committee to give consideration to what appears to us will be an inevitable conflict between State and Federal law if sections 4(a)(3), 4(b) and 12 are enacted in their present form. As I mentioned previously, the National Conference on Weights and Measures, sponsored by the National Bureau of Standards, has worked for a number of years in cooperation with the various States in securing uniformity in State weights and measures laws. As a result of this work the national conference has adopted a model State regulation pertaining to packages and marking requirements, and a number of States have adopted regulations in conformity therewith.

Unfortunately, the provisions of section 4(a)(3) of H.R. 15440 appear to be in irreconcilable conflict with those contained in the model State regulation.

In my prepared statement on pages 14, 15 and 16 I point out in detail these conflicts and how they come about.

Now wholly apart from the dilemma of being unable to comply with both State and Federal laws requiring different expressions of quantity declarations, there would be a very heavy expense merely in changing the form of quantity declarations to bring them into compliance with the Federal law. Many glass containers have the label information, including quantity declaration, either blown into—that is, molded or embossed on—the glass surface, or permanently applied thereto by means of fired ceramic labels, sometimes referred to as “applied color lettering” or “ACL.” In the case of blown lettering, the metal molds used to form the containers are carved with the necessary lettering.

Now at this point I would like to interject, if I may, a comment on the testimony of Lawrence Barker representing the National Conference on Weights and Measures. On page 4 of his statement, the paragraph numbered 4, he indicates that they are advocating disallowing embossing and molding lettering on a container. Now I cannot believe that this is actually their intent because in the model State regulation promulgated by them is a whole section, section 6.7, pertaining to permanently labeled glass containers and providing provisions for molded lettering. So I am sure that they recognize the practical factor, that this lettering is important and necessary, and I am sure they do not intend to eliminate it.

Now our members have just completed a very extensive and costly program of making the necessary changes in their molds and in their ceramic label designs to bring them into compliance with the model State regulation. Our best estimate is that it would cost more than

\$1,500,000 to weld and recut the molds and to produce new ceramic label designs simply to bring the quantity declaration into compliance with the regulations which the agencies would be required to promulgate under H.R. 15440.

Moreover, the cost of making these changes is only a part of the problem. One of our members has informed us that if every one of its employees who has the requisite skill to make the necessary mold changes were put to work exclusively and for a full 7½ hours a day simply on making such mold changes, it would take 2 years to bring its molds into compliance with the form of quantity declaration required under the present wording of section 4(a)(3).

We see no reason why a Federal law should require a different form of quantity declaration than that required by State laws. This would seem to be particularly true where, as here, the Federal Government has played a leading role in securing the adoption of the model State regulation. We respectfully urge, therefore, that section 4(a)(3) of H.R. 15440 be amended so as to conform with the requirements of the model State regulation.

Now one last point, Mr. Chairman. So as not to confuse what is represented by that \$1,500,000, that would be simply to rework the molds to come in conformance to section 4(a)(3). We have made a survey of our industry and find that the molds for glass containers which would be affected or put in jeopardy by this bill, if enacted—that is, molds covering food and beverage containers and what we call the chemical proprietary drug and cosmetic containers but excluding alcoholic beverage containers and milk containers which will not be covered in the bill—the replacement value of those active molds in use today would be well over \$30 million and these would be placed in jeopardy and some substantial part of them, if the agencies applied the 5(c)(5) and 5(d) to them, would have to be replaced at a very enormous cost to our industry.

Now I hope that I have not gone through that too quickly but you do have the prepared statement before you.

Mr. JARMAN (presiding). Thank you, Mr. Cheney, for your contribution to this hearing.

Let me ask you, when did the National Conference adopt the model State regulation?

Mr. CHENEY. In June of last year, I think, 1965.

Mr. SPRUNK. Yes.

Mr. JARMAN. How many States have adhered to the standards set out in that?

Mr. CHENEY. I don't know.

Mr. JARMAN. You mentioned a number of States have adopted the regulations.

Mr. CHENEY. I would say it is well over 20 at this time. The States have been progressively adopting them as they have the opportunity. The gentleman who appeared this morning probably knows but I don't think he testified to that.

Mr. JARMAN. Perhaps you could furnish that information.

Mr. CHENEY. Be happy to.

Mr. JARMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I noticed on page 7 of your statement you have this comment:

If the purpose of Section 5(c) (5) is not to authorize regulations banning as deceptive those packages which may appear to be larger than others holding the same quantity, what purpose is that Section intended to serve?

I was pleased to see that observation in your testimony because it seems to creep into the hearing at intervals, and the term "slack fill" likewise is often used. To my surprise in the hearing when Mr. Cohen appeared, Deputy Commissioner of the Food and Drug Administration, I asked the question of Mr. Cohen about the slack fill, what authority did they have, and Mr. Rankin responded by referring to section 401 of the Food and Drug and Cosmetic Act pointing out that if there was a great proliferation there that they did have the authority and could exercise the authority to stop a practice which was deceptive as far as the consumer is concerned.

So to me it is strange that we should have another provision in this bill which covers something already in the law. I wonder if you want to comment about that.

Mr. CHENEY. Yes. If the intent of this is to prevent slack fill, I do not think it is very clearly brought out. As written it would simply seem to standardize shapes and sizes. In the case of glass containers this would not have any effect on slack fill, they are transparent anyway, and it does not seem to deal directly with slack fill for opaque containers.

Mr. NELSEN. I touched on this repeatedly and it seems that it is necessary to do that to get a point across, but under the present regulations if there is deception, if the Food and Drug Administration feels that some practice is in violation of the law in a case-by-case basis they bring adversary proceedings against those who are in violation and have the right to do that under the present law but the Federal Trade Commissioner sitting down at that desk said that he wanted rule-making authority so that he could bring action. Rulemaking authority could get pretty broad and even if industry sits in on writing the rules under which the industry must comply with, you have no way of knowing how they will be interpreted.

If an arbitrary Trade Commissioner sits in judgment, then it seems to me that going over to the Federal Trade Act for penalty could be a very severe deterrent to the great technique of merchandising and innovations that we have in this country which make shopping sometimes quite interesting. I am sure you would want to comment about this.

Mr. CHENEY. Yes. You have stated very well the apprehension we have here. We do feel that this bill would give them that sort of authority and we do not feel that it is the proper way to do it. We think that case by case is the American way of doing it, that to enable an agency to legislate things of this kind even with the relief, as you say, of hearings and so forth would, among other things, we feel impose injustices on industry and, we feel, particularly our own industry; and also add costs because it would be very costly to go through all these hearings; and also inhibit innovation because people with new ideas are not going to want to go into public hearings and air them and yet they would not dare introduce them on the market at great cost if they are going to be knocked out the next day.

Mr. NELSEN. In other words, you would hesitate to make the tremendous investment in a new package fearing that you might be turned down after having spent many, many dollars to develop it?

Mr. CHENEY. That is right.

Mr. NELSEN. I think this point has been repeated over and over again and I am sure you are well aware of it.

Mr. CHENEY. Yes.

Mr. NELSEN. I think it is important that the hearings reflect some of these things because I find even among members of the committee sometimes we are not always aware of just what is in the bill until we carefully review it. I hope we make some changes.

Thank you.

Mr. CHENEY. Thank you, sir.

Mr. JARMAN. Thank you.

Our next witness today is Mr. Robert L. Callahan, Jr., legal counsel, American Bottlers of Carbonated Beverages.

Mr. Callahan?

Mr. REED. Mr. Chairman, my name is Dwight Reed and I am the witness. Mr. Callahan is our general counsel.

Mr. JARMAN. You may proceed.

**STATEMENT OF DWIGHT C. REED, ASSISTANT EXECUTIVE VICE PRESIDENT, AMERICAN BOTTLERS OF CARBONATED BEVERAGES; ACCOMPANIED BY ROBERT L. CALLAHAN, JR., LEGAL COUNSEL**

Mr. REED. My name is Dwight C. Reed, and I work for the American Bottlers of Carbonated Beverages, the national association of the soft drink industry. The active membership that we represent here today consists of 2,404 independent manufacturers who bottle and distribute soft drinks throughout the Nation.

We appreciate the opportunity to appear before you today and to bring our views of this proposed legislation to the committee. We have followed the progress of packaging legislation through the Congress with interest and concern, testifying twice before Senate committees in opposition to specific parts of the proposal. The bill passed by the Senate, meaning S. 985, we feel, represents less of an excursion into industry by the Government than its earlier versions, and is improved thereby. Our comment today is directed to H.R. 15440 which contains certain provisions we would not wish enacted into law.

Most alarming of the provisions of this proposal to the soft drink industry is subsection (c) (5) section 5, which would invest an agency with the authority to restrict package size, shape, and dimensional proportion on an industry or commodity wide basis, if unspecified and undefined conditions of deception or confusion are thought to be present.

In order that our concern over this provision will not be misconstrued, permit us first to say we do not quarrel with an intent to assure consumers that they are not the victims of deception. We believe consumers have the right to know and manufacturers the obligation to provide honest and conspicuous information as to what product is being offered and in what quantities. We believe manu-

facturers who engage in deceit, deception, or fraudulent misrepresentation should be denied seeking the rewards of the marketplace by such methods. But we frankly believe also it fundamentally wrong to couple this intent with a punitive preemption of legitimate and historical rights of choice of honest manufacturers.

Under the umbrella of that philosophy then, our concern over 5(c) (5) of H.R. 15440 centers on the grant of discretionary authority to a regulatory agency which, first, could seriously affect what we consider our unabused competitive rights and, second, because of it giving rise to a system which could place in jeopardy some part—perhaps significant—of the important container dollars invested by our many plants.

We believe such authority, thus bestowed, tempts abuse and indulgence which will operate to the detriment of industry and consumer alike. We believe that the application of this power will predictably settle into policies and standards of interpretation, which will work more to the ease of administration than to the justice of individual case determination. We believe, for instance, administration of this authority will give rise to “*per se*” concepts of deception, where categories of packaging irrespective of their instant use or nature, will be banned and Government will feel—as indeed it already professes to feel—it inconvenient to establish deceit or deception in the affected case. Thus the manufacturer’s right to choose a package will be sacrificed in some measure to regulatory procedure. We do not believe we have demonstrated cause warranting such erosion of our packaging prerogatives.

We base the above expressed views on the remarks of Government witnesses who have testified in support of this legislation. For example, appearing before the Senate Subcommittee on Antitrust and Monopoly, the Food and Drug Administration in the personage of its then Commissioner, Mr. George P. Larrick, speaking of current law, said:

We have to proceed on a case-by-case basis, which is time consuming.

Further, he said:

We have lost every contested action involving deceptive packaging in food. We believe that the truth-in-packaging bill represents a better approach in bringing about improvement in packaging of consumer commodities than a program of enforcement on an individual commodity or a case-by-case basis under present law.

And lastly—

While legal actions have been taken against products on which the quantity of contents statement violated the provisions of these regulations—

Meaning here existing law—

in each such case it has been necessary to charge violation of the act in terms of the provisions of the act itself rather than in terms of regulations issued under the act, and to satisfy the Federal court that the label in question is inconspicuous.

It is disquieting to this industry to hear Federal agencies ask Congress for the power of administrative fiat as a substitute for judicial determination, on the basis of inconvenience, bother, on their failure to prove past cases. In our view fraud is fraud and deception is deception, findings of fact. And if not demonstratable, we question

their existence. We perceive no legitimate distinction between a judicial standard for deception and an administrative one.

We are opposed then, in general, to authorizing a Federal agency to outlaw as deceptive by regulation packaging practices which a court has refused to find deceptive.

The particular concern of the soft drink industry, and it is a very real concern, stems from the bottlers' long-established reliance on the returnable glass container. There is today an inventory of some 28 million gross of these containers at a value of about \$280 million. In many cases this investment represents as much as 40 percent of a bottler's net worth. If enacted, this legislation could threaten part of that investment in our view.

A consumer does not ask for a soft drink, or a lemon-lime drink, or a cola. As a matter of general practice, she asks for—or purchases—a brand name drink. Such product identification did not just happen. Industry practice is devoted to the assurance that consumers know and readily identify its products by name and appearance. Distinctively shaped bottles constitute a major part of such effort. Many of these container shapes and designs are trademarked. To change a design or package shape erases years of established product recognition and familiarity.

Additionally, since a bottler cannot write off his existing returnable inventory and survive economically, package change contributes to confusion in that the product is available in two different packages until his old inventory is exhausted, and this generally takes years. For these reasons package characteristics are rarely changed in this industry, and only then for a long-range, major competitive move.

Yet we believe we see in this proposal the chance that a bottler could be forced to change his familiar package and suffer the marketing consequence, not because his package is deceptive, but because it has characteristics similar to some other package which administratively was judged "likely to deceive."

We would point out a second area of practical concern expressed by our membership over this legislation. Because of the strong spirit of competition in this industry which places such a premium on distinctive packaging and product identity, a major effort goes to package design preceding the introduction of a new product. We believe that industry growth, new product acceptance, and continued consumer loyalty to brand-name image have demonstrated the value and worth of this practice.

Although it is difficult to express by specific reference, our industry generally feels that establishing a Government censor—which in effect this legislation would do—would tend to inhibit creativeness in design of new containers. We realize that in theory the administration of such legislation would intend to inhibit deceptive package design only but our experience with other regulatory agencies, however, leads us to believe such authority would in time dominate and tend to stifle almost all phases of packaging endeavor.

We point out once again that we carry no brief for the fraudulent packager, and we fully support laws to stop and, where appropriate, punish deception. We do not seek insulation or immunization from proceedings designed to enforce such laws. We do not subscribe, however, to outlawing by decree what is neither demonstratable nor sup-

portable in court. And we consider such practice alien to American standards of justice. Agreeing with the Senate that section 5(c)(5) is both unnecessary and unwise, we respectfully urge that it be deleted.

We want to thank you, sir, for extending us the opportunity to express these views.

Mr. JARMAN. Thank you, Mr. Reed.

Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Under the adversary proceeding now we will say that there appears to be some violation and the Federal Trade Commission brings action which goes to court. Just what type of court procedure is it, a jury trial or what is it like?

Mr. CALLAHAN. The proceedings brought by the Federal Trade Commission would be before a district court judge without a jury.

Mr. NELSEN. Without a jury. I want to comment, Mr. Chairman, and to the witness that I am very pleased that the emphasis of your testimony points in the very direction that has bothered me most in this entire bill. I am fearful of a situation where more and more of our business communities are put in a position of bowing down and buckling under to arbitrary bureaucrats. I have seen it happen in small business loans, I have seen it happen in antitrust action, I have seen it happen all over in many, many ways. If we move in this direction here again, we would be permitting another hold by bureaucracy on our free enterprise system which has made the United States of America the strongest nation in the world. I thank the witness for directing the burden of his testimony in this direction which in my judgment is a very dangerous part of this bill.

Thank you, Mr. Chairman.

Mr. REED. Thank you, Mr. Nelsen.

Mr. JARMAN. Mr. Reed, we appreciate your being with us on this important subject.

Mr. REED. Thank you, Mr. Chairman.

Mr. JARMAN. This concludes the committee's list of witnesses today. I would like to mention now that Mr. William Heimlich, vice president of the Association of National Advertisers, Inc., who gave up his place in the list of witnesses today to permit others to testify, will be our lead-off witness in the morning.

The committee then will adjourn until 10 o'clock tomorrow.

Mr. NELSEN. Mr. Chairman, one inquiry. I do not know what statements have been submitted for the record that we have not heard. Have there been a large number that have been turned in? If there have been, are they available to any one of us who wishes to examine them?

The CLERK. Yes.

Mr. NELSEN. Thank you. I would like to have a list of the witnesses that have submitted testimony since I would want to be able to refer to one in which I might be interested without having to go through the all.

Mr. JARMAN. That will be furnished.

Mr. NELSEN. Thank you.

Mr. JARMAN. The committee stands adjourned.

(Whereupon, at 4:13 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, August 25, 1966.)





## FAIR PACKAGING AND LABELING

THURSDAY, AUGUST 25, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. Good morning to you early risers here. We will get our committee started.

Mr. William Heimlich will be our first witness. He was good enough yesterday to recede and let some of the others appear so we are very, very grateful that he did and I am sure that they are. We want to thank you.

You may proceed as you see fit, sir.

### STATEMENT OF WILLIAM HEIMLICH, VICE PRESIDENT, ASSOCIATION OF NATIONAL ADVERTISERS, INC.

Mr. HEIMLICH. Thank you, Mr. Chairman.

I would like to start out by saying how much I appreciate the interest this committee has shown in this problem. I think it is a fine expression of interest in a problem which affects us all. I would like to thank you and the committee.

The CHAIRMAN. I appreciate your work and I am sure Mr. Nelsen does, and we want to do what is best. We will have to hear all sides and then mark up a bill. That is the reason we do appreciate your testimony as I say, and your allowing the others to proceed ahead of you.

Mr. HEIMLICH. Thank you.

Mr. Chairman, my name is William H. Heimlich, a vice president of the Association of National Advertisers, a trade association founded in 1910.

The members of ANA represent more than 500 companies which use advertising in the promotion and sale of their goods and services.

The ANA has been troubled over portions of H.R. 15440 and its companion bills in both the Senate and the House since S. 347, later S. 985 was initially introduced. As a reflection of this concern we testified through our general counsel Mr. Gilbert H. Weil, and through Mr. Jerry Green of the Alfred Politz Research Organization in opposition to the bill before the Senate Judiciary Committee.

I should like to say, sir, that I have provided the committee with copies of the research undertaken by the Politz Research Organiza-

tion which may have meaningful bearing on the bill. I may refer to that later.

With your indulgence, sir, I shall skip through the testimony.

The CHAIRMAN. Fine, anything that you think is pertinent, and we appreciate that.

Mr. HEIMLICH. Thank you, sir.

We are most gratified that since that time the bill has been modified in several important respects. Nevertheless, with your permission, I have appended the research on "cents-off promotions" conducted for us by Mr. Green to this statement. I call it to your attention as concrete evidence that, despite everything said to the contrary, consumers strongly favor cents off over other promotion devices.

The marketing function is a new development in American industry, and it reflects new and not totally defined business viewpoints. For shorthand purposes we call it the marketing concept.

I mentioned this development here because it is at the root of our concern over H.R. 15440. The fundamental function of marketing is to go into the marketplace—go to the consumer—and find out what the consumer wants or may want and to then provide just that, whether or not it is what the company has manufactured traditionally or finds most convenient to manufacture.

The marketing concept has put the consumer in the driver's seat. By looking for what the consumer wants, marketing has accounted for many of the improvements in products and for much of the innovation which we see all around us. It is marketing thinking which has led to prepackaged meals rather than potatoes in bulk, aerosol cans rather than "Flit Guns," pens with ink cartridges rather than bottles which spilled, and shoe polish designed for shoes rather than for your fingernails.

From the consumer's viewpoint such developments as S. 985 can only be a giant step backward. And to compound the error the step could be taken without any genuine or commensurate gains.

One of the most recent marketing reports passed my desk just a few weeks ago and it pointed out that in the 12 months of 1966, more than \$15 billion—that's 15 followed by 9 zeros—will be spent by U.S. industry in research and development. Of that amount, \$10.5 billion will go for development and this means that we will have an explosion of new products in the immediate years ahead. That same study pointed out that within 3 years, by 1970, 15 percent of the total sales of U.S. companies will come from products which do not now exist! This is a reflection of the unbelievable accumulation of new knowledge, of new discoveries, of new techniques, automation, of computers and consumer sophistication. And buried unseen in those sentences is the promise of new jobs, whole new industries and better, healthier, and happier lives for all our people.

When S. 387, the predecessor of S. 985, was being considered in the Senate, one witness testified that 30 years ago there was one way to buy potatoes—the same way they had been bought for the past century. Then somebody thought of washing them, putting them in a bag, preweighed. The idea was instantly accepted. Now, 3 decades later, you can buy those potatoes in more than 60 ways—canned, frozen, dried, mashed, diced, cooked in a score of ways, even prepared in the same dishes in which they are to be served.

And does our consumer object because she finds a price comparison difficult? Not in the least. On the contrary, her insistence has brought about these remarkable conveniences. She buys each and every one of those products in sufficient volume to make it profitable for many new companies to make them in competition with each other, and to constantly improve the quality of the product, for therein lies the way to the consumer's heart. And what we have just said about potatoes is equally true of nearly every food in the market. It is true of every consumer item all the way up to and including automobiles and houses, for here, as everywhere, marketing men seek out consumer demands and out of their demands come the new goods and services, the new products, new jobs, and, of course, new taxes to help pay for the new services which are demanded of government itself.

Such a response, I submit, could not be made by industry if it were to be subjected to the bureaucratic controls such as those which are an important segment of H.R. 15440. The consumers' free choice would be severely circumscribed and small manufacturers especially would be denied the potent tools of innovation and originality which they need to build markets for their products. The fact is, we might find ourselves in the sorry position of being legally locked into the status quo at the precise moment when the knowledge explosion is producing new materials, new ideas, new products, and new conveniences for the consumer.

As you well know, the consumer is constantly being evaluated. We know much about her habits, her wants, and her complaints. She is being surveyed continually by age, education, sex, race, geographic location, income, and every conceivable measuring stick. We know that the average shopper today is infinitely more sophisticated than her mother was 30 years ago. We know that she goes to the supermarket three times a week, spends about 27 minutes there, has a family income in the neighborhood of \$100 a week—that is a disposable income—we know the age levels and her education. We know that in more than 80 percent of the cases surveyed (Poltz survey) she prefers cents-off promotions to any other kind, reads the labels and is satisfied with what she finds on them. In the case of nonprescription medicines, for example, 77 percent are satisfied with the directions and only 4 percent feel that they need more information (Du Pont consumer study). We know that she is concerned with status symbols and takes pride in talking about having bought the very newest thing, whether it is a washing machine or a new drug prescribed by her doctor.

We know that when instant coffee was introduced our psychological experts predicted housewifely resistance, said they would not buy it, but they were wrong. We know that her husband has moved up, that the blue-collar worker has superseded the blue-denim worker, and that common labor is fast disappearing. Indeed, the whole quality of American life has been remarkably upgraded in the past 10 years and will go much further in the next 10, always provided that no artificial restraints are imposed by unforeseen disasters. And one of those disasters from our standpoint—and from that of the consumer as we know her—would be the "voluntary" or involuntary standardization of product packaging.

And when we talk about the "average" shopper, we know full well that there is no such thing, for what distinguishes Mrs. Consumer in

1966 is her independence, her departure from average. Marketers want to respond to every consumer so far as possible, and one of the prime reasons why we resist standardization is for a healthy, competitive choice.

Packaging, as well as products, are the inevitable result of consumer demand. And it need not be a majority of consumers or even a small percentage who demand—and get—concessions from the producer. For even a small percentage may represent millions of consumers.

Take, for example, the aerosol package which has become so tremendously popular. Just a few years ago there was no such thing as an aerosol container. Today it is used for everything from perfume to cake decorations and paint cans. Can you imagine the reaction of a government worker to a proposal to produce and sell a can which is largely empty with gas? I am reasonably sure that he would have rejected the proposal out of hand, not because he was arbitrary but because he had no knowledge of the marketing know-how which showed consumer need and consumer acceptance of such a product.

Our competitive systems make it mandatory that the manufacturer not only respond to consumer demands—they have got to actively and constantly listen to the voice of the consumer if they are to succeed in business. We can stop confusion cold by prescribing a uniform standard day—as the Chinese have—or by simply having Government regulation of prepackaged items for families of various sizes.

A current study by Sales Management, the magazine of marketing, has some facts which might be appropriate for your consideration. The results were published in July of this year. The survey covered hundreds of families selected for income, geographic area, race, and age. Some of the questions went like this:

When I buy a food or household product for the first time, the packaging container has great influence on my choice of brands.

Forty-nine percent agreed: 47 percent did not agree. You would have thought how balanced the results were, nearly 50-50. Then came the next question:

Given the choice between similar products, I'd be willing to pay more for a product that came in the more efficient or convenient package.

Sixty-one percent agreed: 32 percent disagreed. And that percentage held true for all income groups. And then they were asked:

When I read a label that the product is selling for so many cents off, I assume that it's a bargain.

Overall, 56 percent agreed and 41 percent did not agree. Significantly, however, the lowest income group reported 64 percent agreement. And that is just about identical with the survey we had done by the Politz organization 3 years ago.

What I am getting at here is not just majority preference but the diversity of opinion. We call it market segmentation. It could just as easily be called individual choice. As I stated earlier, a small percentage may actually represent millions of people. Percentages do not tell the whole story. People are not alike. They are not standardized and they do not want to be. And the ladies who count for the bulk of the buying take pride in being different. The old idea of "keeping up with the Joneses" has long since given

a kind of "one upmanship"—a healthy reflection of the better education and sophistication which I referred to earlier.

In her appearance before the Food Marketing Commission, Glenda McGinnis, food and equipment editor of *Women's Day*, stated:

I can count on my fingers the complaints we have had from readers on the subject of food products, packaging, and so forth, in the more than 25 years I have been on my present job.

The Better Business Bureaus which have more than 8 million contracts with consumers each year through their 121 bureaus in this country—a far greater consumer contact than any other group, private or governmental—report that complaints on labeling are so minimal as to defy classification or percentage evaluation.

And, finally, a recent survey by *Good Housekeeping* magazine turned up four significant conclusions:

1. Women do read labels on packages (a fact borne out in most other surveys).

2. They think that they get the information they need from labels and packages.

3. They would like more information on clothing labels. Mrs. Peterson, I think, reported to the committee they are now going to get that.

4. They complain that some packages are hard to open.

The important thing here is the voice of the consumer, constantly heard, constantly heeded for she is the customer. With the producer, the people who must stand or fall on what the consumer decides, every day is election day with every ballot counted and no recounts permitted. If the purchase ballot is not cast for any given product, out it goes.

In conclusion, Mr. Chairman, may I express the hope that H.R. 15440 will receive even further critical scrutiny by your committee. In this, it is our belief that your objective should be to seek out anything in packaging which is truly false or fraudulent. While we are inclined to believe that present law, vigorously enforced, is sufficient to control falsity, we stand ready as we always have to support sound legislation and regulation in this area.

On the other hand, the elimination of confusion in the marketplace through standardization or by locking in the status quo is a very different matter. If that is to be accomplished, it can only be done at the expense of the consumer herself. Accordingly, we must urge that H.R. 15440 be amended to confine itself to deceptive practice rather than to such subjective issues as confusion or rational choice.

Freedom of choice is a precious right, one which will be exercised in the elections in November and which is inherent in our free system of government. It is no less precious and no less exercised in the marketplace. That is why we have asked to be heard here today and also why we hope you will take a good, long, hard look at any proposals which might limit consumer choice. The question as we see it is simply this: Is the consumer willing to sacrifice the broad choice she now enjoys in return for a standardized market with little or no choice between products? We believe her answer would be a resounding "No."

In the survey of the Alfred Politz organization on the matter of cents off which, of course, is now under the proposed 15440, we learned

that consumers like first or second best cents-off sales, 80.3 percent; coupons, 57.2 percent; premiums, 42.8 percent; and contests only 6.6 percent.

They were also asked whether or not Congress should pass a law governing cents-off sales and the question was asked in this way: "There was an article in the paper the other day that said Congress is considering a bill which would make it illegal for a manufacturer to offer his product to the consumer on a cents-off kind of sale; in other words, by law the manufacturer could not lower his price and mark the savings on the package accordingly."

"What do you think about this? Do you think Congress should pass such law or not?"

The results: Think Congress should pass such a law, 8.9 percent; think Congress should not pass such a law, 63.8 percent; no opinion, 27.1 percent.

I should like also to point out that as he developed in his testimony before the Senate Judiciary Committee, Mr. Green reported that the techniques employed in this survey were precisely those which are employed in their service to Government agencies including the Department of Commerce. We think that there is a reasonable degree of accuracy in this in that more than 74 interviewers were used and more than 1,400 people were the subjects of the interviews.

That concludes my presentation, sir.

The CHAIRMAN. Thank you very kindly for making your statement brief. I think it has been a very good statement. I am sure that it will be helpful to all members of the committee when they review this record to start to mark up the bill.

I notice that you say that if we find deception, and fraud then you are not averse to some legislation that might correct that.

Mr. HEIMLICH. Yes, sir. We also support the present laws in this area, and we believe that they could be more vigorously enforced as has been brought out by Government witnesses.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I noted your reference to the sales. Of course if I buy a bushel of potatoes from the producer I get a very good bargain, but it seems to me that today the people are buying a service as much as anything else. I am reminded of the farm folks in my office a number of years ago complaining about the hens that were selling from the farm bringing only 15 or 20 cents, while in the food markets poultry products were very expensive. I pointed out to this lady that if she took one of her Plymouth rock chickens and chopped its head off and put it on the counter there would be no buyers because no one knows how to take the feathers off the chicken any more. One of the things the public is demanding is service.

Many of the products may not be the best bargain, but it is the service the consumers are seeking. To a great degree your polls and your sampling of opinion would indicate the same thing.

Mr. HEIMLICH. Yes, sir; that is true. I was born and reared on a farm out in Mr. Gilligan's home State and I appreciate the convenience of the present packaged chickens in the supermarkets even though it costs a little more.

This also brings up the matter of the price per unit and the comparative price. It is very difficult to compare the price of a pound of potatoes which you buy from the vegetable bin and weigh them and sack them yourself with, let's say, a potato souffle that has been prepared, frozen, and is ready to stick in the oven and serve from the same container. Price comparison today is impossible. We are buying not just for price as we did 30 years ago, but for dozens of other reasons.

Mr. NELSEN. I was wondering if your survey has indicated some areas where there is deception. I think the committee would want to do whatever is necessary in the area of deception if we can put our finger on it and if we can write legislation that will not stifle our economy and our system.

Have you found in your surveys any indication from the consumer of an area of malpractice in merchandising?

Mr. HEIMLICH. Yes, sir; but this generally involves an area which the manufacturer is helpless to act upon. We welcome the activities here and we recognize that they are utterly necessary, the activities of the Federal and State agencies, such as deception in weights or misrepresentation of product.

Mr. NELSEN. Which are now illegal.

Mr. HEIMLICH. Which are now, presently, illegal. Yes, sir.

Mr. NELSEN. One thing that seems to me to be quite evident in many of the representations that have been made before this committee is the result of a failure to use existing law to do what the complainant is asking for. It would seem to me that the Food and Drug Administration or the Federal Trade Commission in those cases have not exercised the authority that they now have. It is perhaps because of the lack of personnel and the lack of money as far as the Congress is concerned. But if that be true, they have not represented to us to my knowledge that they have not had enough money, and I don't know of any instance where we have turned them down where they need it. It seems to me that this committee might examine whether violations have occurred, and, if there are complaints, why they have not been filed with the proper authorities for investigation.

I have no more questions, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. No questions.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. No questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. No questions.

The CHAIRMAN. Thank you very much. We appreciate your standing by yesterday. We appreciate your testimony and I think it will be very informing to us.

Mr. HEIMLICH. Thank you, sir.

The CHAIRMAN. Mr. Walker Sandbach, executive director of Consumers Union.

We are very glad to have you, sir, and to have your comments. If you can do like the former witness, perhaps skip some of your prepared statement and put it all in the record, we will appreciate it, but if not, give it in the way you think best to get your story across.

Mr. SANDBACH. Thank you, Mr. Chairman. I will be very happy to summarize a good part of what I have to say.

The CHAIRMAN. Fine.

**STATEMENT OF WALKER SANDBACH, EXECUTIVE DIRECTOR,  
CONSUMERS UNION**

Mr. SANDBACH. Let me start by saying I very much appreciate the time that this committee has spent on this issue. I was here during the air strike hearings, hoping I might be able to testify on this bill. I realize the many problems you have had and I think every one appreciates the concern you have on this issue.

I come before you from a dual background. I am executive director of Consumers Union, which publishes Consumer Reports, a magazine which goes into a million homes every month. Before I became executive director of Consumers Union I was general manager of a consumer cooperative in Chicago which had as its major business the operation of a supermarket. Most of my adult life has been spent very closely related to supermarket operations so that I have now my direct relation with the consumer and previously the operation of a supermarket, which is perhaps an even more direct relation with the housewife.

My findings have been that the housewife is very, very disturbed by the problems of shopping in a supermarket. We just heard from the previous witness that there are very few problems. I just cannot understand what they are talking about. At Consumers Union we have had over the past 5 years literally thousands of letters from housewives telling us about the problems with packaging they have had in the supermarket itself.

At the co-op, where we had 20,000 customers a week in the supermarket in the Hyde Park section of Chicago, we had complaint after complaint about the kind of packaging problems they ran into, and it is this kind of thing of which I would like to give you a few more examples.

How could this issue have stayed alive 5 years in Congress if there was not a groundswell of concern or interest on the part of the housewife out in the country?

I have brought along a few examples and I would like to just go over those with you and leave them with you.

When housewives write in to us they frequently send us the label to show us exactly what they have run into in the supermarket. This first one is from Wheat Chex. Here are two packages. The old package was a 12-ounce package, the new package is the 9½ ounce pack, exactly the same size box. How did they perform this miracle, because both boxes were equally full? We sent the complaint of the customer in to the Ralston Purina people and they explained to us that they had found through their marketing research that the consumer liked a little more tender pieces of cereal so they put more air into this cereal to make it more tender. Now you have a little bigger Wheat Chex and it does not take as much space; it does not weigh as much.

The question I ask you, and I am not sure this bill is going to solve it, but it may help if you give enough authority to Food and Drug or Federal Trade, how would the consumer ever know that she had a 25-percent price increase in this instance? The box is the same size and



she is not going to remember that last time she bought it it was 12 ounces, the next time 9½. The 12-ounce package has gone off the shelf. She is not even going to know she has had a 25-percent price increase right there in the package.

Mr. NELSEN. Mr. Chairman, I have a question at this point.

Did the old product continue to be on the market?

Mr. SANDBACH. No; discontinued.

Mr. NELSEN. Then are you saying that if the consumer prefers a different texture of product she should be denied that product or a you saying that the old package should be taken off the shelf immediately if a new substitute is made?

Mr. SANDBACH. What I am saying is that what we need is for some way to be found to do away with the hidden price increase which is what this really is. This is a hidden price increase, a 25-percent price increase.

Mr. NELSEN. We will say that the consumer prefers a lighter texture. What you are saying is that the box should be bigger for the new product, with the same weight in it?

Mr. SANDBACH. Yes.

Mr. NELSEN. If you standardize the package how are you going to do it?

Mr. SANDBACH. There will be no easy solution. Let me go ahead with some of the other problems that we have here.

Now here we have a case of Diet-Rite Cola. The standard package has been six 16-ounce bottles for 65 cents. I was still operating the co-op supermarket in Chicago when this new promotion came on the market. They discontinued for the time being the six 16-ounce bottles and came out with a new package, eight bottles for 67 cents. They marked on the side of the carton, "Two bottles free." What they did not say on the package or in their advertising was that they had changed from a 16-ounce bottle to a 10-ounce bottle. As the housewife who sent this in says, under the old package where she got six bottles with nothing free, she got 96 ounces for 65 cents; under the new package where she is getting two bottles free she now only gets 80 ounces for 67 cents.

In this case the manufacturer said you get two bottles free but he actually gave the consumer a lot less for her money.

Here is another example of the same kind sent in by a housewife from Nebraska. In this one we have two packages of Baggies. The old one said 150 sandwich bags, 36 cents. The new package is marked still 150 bags for 36 cents, but now the package says, "50 Extra Bags Free When You Buy This Box at Regular 100-Bag Price."

The regular package is going to be 100, apparently, but it is still 150 here and we have the same price, the same number of bags, but now there are 50 free. That is what I call deceptive packaging.

Here we have another one sent in by a housewife from California. In this case the General Mills' Betty Crocker Potato Buds is marked 1 pound .5 ounces net weight. The customer bought it thinking she was getting 1 pound 5 ounces, when actually she was getting 1 pound and half an ounce.

Here is another example. This one is from California. "The only thing that is new is the price, 10 cents up. Last time I bought this, it was 59 cents for the same item. All of a sudden it is 69 cents.

It is an ordinary tube of Listerine toothpaste, nothing 'giant' about it. Do they really think housewives are still falling for such nonsense? I feel insulted."

Well, I can tell you from my own experience in the supermarket that the housewife does fall for such nonsense when it is marked "new," or it is marked "giant"; they think they are getting something extra and they buy it.

This one is a rather common problem which you have heard a lot about. It relates to cents-off promotion. A housewife in Connecticut says, "Here is some more ammunition for your truth-in-packaging war. These two boxes of Tide were purchased at the same store, First National Store, within a 2-week period. Note that one reflects a 20-cent saving, yet both packages sold for \$1.43. This was the last straw and I have now switched supermarkets."

I could tell that housewife that it probably will not do her any good to switch supermarkets because this happens over and over again in supermarkets where they do not take into account the money that is allowed by the manufacturer, and they keep the same price even though the package says 20 cents off. Now the manufacturer has absolutely nothing to do with the setting of that retail price and every time we get one of these we send a copy of the letter on to the manufacturer and we ask them for an explanation which we can then publish in Consumer Reports. Over and over again they come back and say to us, "We have no control over the retail price so it is not our fault."

Well, if they have no control over the retail price and this kind of thing is going on, it seems to me Congress should consider doing something about it.

Here is another letter about the cents-off problem from a housewife in Pennsylvania. This is a letter she sent to Carnation & Co., and sent a copy to us.

Once again the consumer is duped and victimized. Several weeks ago your company introduced its new product "Carnation Instant Breakfast" with intensive advertising, including "ten cents off" coupons sent to homes. I, unfortunately, was one of the unsuspecting consumers who fell for the ten cents off deal and purchased a box of Carnation Instant Breakfast—Eggnog. When I got home I noticed a tab on the lid with the price of 79 cents stamped on this gummed tab. Thus, the price for me was 69 cents. Being curious, I pulled back the tab and noted that the price underneath was 69 cents—the original price. Big deal! I saved nothing on the so-called "ten cents off" deal. The price was raised ten cents. In reality, I saved nothing. This is most discouraging and disgusting.

Another letter from a New Hampshire housewife says that Kraft Vegetable Oil was marked with a big "7 cents off." When she compared it with the price she had paid last time on the bottle she still had at home and she found she saved 1 cent instead of 7 cents. She says, "How about that? Where do we scream? Where will it do the most good?"

They have been screaming to Consumers Union; I hope they have also been screaming to some of you Congressmen.

One of the other areas I would like to just briefly mention is the problem of the proliferation of labels and items in the supermarket. You may remember in the Senate Commerce Committee testimony it was brought out that there were 71 different sizes of potato chips under 3½ pounds. In a California wholesale grocery book that we checked

we found that in 1961 there were five different sizes of salad oil. That was in 1961. In 1966 this has changed to where we now have 11 sizes.

Before there were four standard sizes, the old reliables; the pint, the quart, the half gallon, and the gallon, and there was one in-between size, 24 ounces. By 1966 the number of sizes had more than doubled and in addition to the four standard sizes, the 1966 order book has 12-ounce, 14-ounce, 24-ounce, 36-ounce, 38-ounce, 48-ounce, and 96-ounce sizes.

Now I can understand why it is necessary to have a considerable variety of sizes and why the agencies need to have some discretion, because in an item like cake mixes you have a different mix of ingredients in each package and you are not going to be able to come out with standardized exact sizes of boxes for cake mixes.

Now how can the food industry defend 71 sizes of potato chips, and 11 different sizes of salad oil bottles? These two examples could be multiplied time and time again by detergents, instant coffees and cereals, in cookies, in jams and jellies, in peanut butter and on and on.

Do you know how the industry got to 71 sizes of potato chips and 11 or more sizes of salad oil? From my experience as general manager of this supermarket in Chicago I can tell you how it happened because I saw the same pattern of action over and over again. Take salad oil, as an example. We had these standard sizes. Then 1 day a manufacturer comes out with a hungry pint, 14 ounces instead of 16 ounces. By clever design he makes the 14-ounce bottle look as big as the 16-ounce bottle. Because it is 2 ounces smaller, he has a price advantage with which he can operate. He can either lower the price or he can use this money to bring out a cents-off label, or perhaps he will decide that if there is resistance to putting a new label on the shelf he will say, "OK, Mr. Supermarket Operator, I will give you 1 case free with every 10 that you buy."

With extra profit available, why, naturally the merchant is going to buy it and put it on the shelf.

But his competitors are not going to let him get away with this advantage so they come out with a 14-ounce bottle, also. Maybe somebody is not satisfied with that. In the case of salad oil a manufacturer decides, "I will go one better," and he comes out with a 12-ounce bottle. Then you have this whole competitive race starting. If the 12-ounce manufacturer has a clever designer, he can even make the 12-ounce bottle look bigger than the 16 ounce.

This is what has happened and that is how we have 11 or more different sizes of salad oil, 71 different sizes of potato chips.

It seems to me that the Government will have to standardize sizes and eliminate deceptive shapes. Industry cannot do it. Somebody is always going to step out of line to try to gain a competitive advantage.

The Government is going to have to set what I prefer to call the rules of the road by which industry will have to operate. The grocery industry itself will benefit from the action.

Mr. YOUNGER. Mr. Chairman.

Mr. Sandbach, will you stop for a question?

Mr. SANDBACH. Any time.

Mr. YOUNGER. Are you telling us that Congress ought to pass a law to prevent competition?

Mr. SANDBACH. Not at all.

Mr. YOUNGER. That is what gathered.

Mr. SANDBACH. We will have more competition. Look at it this way. If both bottles on the shelf of salad oil, for example, are 16 ounces, then these gentlemen have got to compete either on quality or on price; they don't have to compete on deceptive sizes. When they first started changing their sizes in salad oil bottles, I don't know if you remember, they came in with voluptuous shapes like this [indicating] to deceive. They had actually changed their weight.

Mr. YOUNGER. You are against voluptuous shapes?

Mr. SANDBACH. Not on women, no. I don't think it is necessary on salad oil bottles.

The CHAIRMAN. You may proceed, Mr. Sandbach.

Mr. SANDBACH. All right.

The industry is faced with a tremendous problem which they talk about on the edges but really refuse to face up to. In 1945 there were 1,500 labels on the supermarket shelves, today there are approximately 8,000. Industry sources themselves predict that by 1970 there will be 12,000 to 15,000 items on the supermarket shelves. To save them from themselves the Government needs to take action to standardize the sizes and shapes of as many items as possible, where it does not make any difference. On cake mixes it makes a difference. On salad oil, why is there any necessity for more than four sizes: pints, quarts, half gallons, and gallons? You don't have to have a whole bunch of sizes. There are no eggs or sugar, and so forth, going into salad oil. Salad oil is salad oil. My wife came home with a new deception last week. We have had, for as long as I can remember, a standard size on shortening, 1-pound and 3-pound cans. My wife came home and said, "Look at this." We now have a 3-pound size can with 2½ pounds of whipped shortening.

I am sure, as the previous witness was talking about, there were market surveys. I am sure this company has a market survey that proves that women would like whipped shortening, but do you realize what this is going to do to all of the recipes that have come down through the centuries that say one tablespoon of shortening or one cup of shortening? These are all out the window because we have air added to this shortening. Here the can is sitting on the shelf with a half pound less shortening in it, which makes it much cheaper than the other one. For the life of me I cannot see why they need to whip the shortening, confuse the housewife, and spoil all of her recipes. But that is exactly what is happening.

The CHAIRMAN. The gentleman from Maryland would like you to yield for a moment. He has a question.

Mr. FRIEDEL. You said something about the basic size.

Mr. SANDBACH. Yes.

Mr. FRIEDEL. We had a representative of the Campbell Soup Co. here and he said if they had to package all the same weight, the same size, that they would have to get 70 different patents. For instance, mushroom soup is heavier than noodle soup and noodle soup is heavier than consomme. Now would you be in favor of that being the same weight for each one?

Mr. SANDBACH. I don't want to get into the—

Mr. FRIEDEL. Well——

Mr. SANDBACH. I have a different attitude from most of the manufacturers represented here. I think that the Government has some very able public servants who can use good commonsense in deciding which items can be standardized and should be standardized.

Now there is no question about salad oil in my mind and yet I am sure you can find manufacturers who believe salad oil should not be standardized.

Mr. FRIEDEL. I agree with you.

Mr. SANDBACH. You have got to give some freedom to the Federal Trade or Food and Drug, or whoever it is, to decide which of these items should be standardized, and it seems to me the bill does a good job of saying there will be industry participation in the decision.

Mr. FRIEDEL. I want to go into the point further.

Mr. SANDBACH. There are definitely some items which should not be standardized and there are definitely a great many others that should.

The CHAIRMAN. The gentleman may proceed.

Mr. SANDBACH. Let me summarize the rest of what I have to say here. I can summarize it by saying that any marketing practice that renders rational choice more difficult is a subversion of the American economy. When consumers say that, "We cannot compare prices," they are voicing no minor complaint, they are sounding an alarm.

We depend upon the functioning of the free market system for the backbone or the basis of our whole economy and it is the survival of that free market that this legislation is all about.

Again I say Congress needs to establish the rules of the road. During the 5 years that packaging legislation has been before Congress we have heard many statements from industry sources about how the industry can regulate itself. Recently, I appeared on a TV debate in Chicago with a representative from the manufacturers and he said, "Let us regulate ourselves." Well, this bill has been before Congress for 5 years and they started talking about self-regulation 5 years ago.

These examples I give you are not 1961 examples, these are 1966 examples, which gives you an idea of how good a job they are going to do with self-regulation. They just are not going to do it and they have had plenty of time.

I don't think I need to say any more. The housewife needs a tough, mandatory fair packaging bill. The bill that President Johnson recommended I think will do the job and I hope that Congress will pass it.

Thank you very much.

The CHAIRMAN. I want to thank you, Mr. Sandbach, for coming and giving us the benefit of your views.

We have heard that if the bill is passed that the standardization would increase the cost to consumers. What are your comments on that?

Mr. SANDBACH. There is not any question but what there will be an additional cost. The Government is going to have to have some additional money to supervise. As you may remember, Rand Dixon, in his testimony here, said one of the problems was that the Federal Trade Commission didn't have enough money to do the kind of enforcement of the present laws that they would like to do.

In addition, there will be some increase in cost for some companies. If the Campbell Soup Co., for example, had to go into all these packages they were talking about, undoubtedly there would be some increase in cost.

I have more faith in American industry than they have themselves. I know they will find ways to keep these increased costs to a minimum in the areas in which standardization becomes the practice. Believe me, there are a lot of items which could be standardized; on these items they are actually going to save money in their packaging. Most of them are against this bill so that they are making a very strong case that it is going to be very expensive for them, but when American industry is faced with it they will find a way to cut the cost.

The CHAIRMAN. If the manufacturer could show that his costs have been increased, should we put something into the bill that that should be taken into consideration?

Mr. SANDBACH. I would say no. I think that you ought to make it a tough mandatory bill in which the manufacturers will really have to scratch to cut their costs. The bill should be reasonable. There should be reasonable opportunity for the manufacturers to testify as to their particular product line as to what is involved. They should have their chance to state their case. If it is a reasonable case, as it will be in some instances, then the Government ought to have the opportunity to say that this is what we are going to do. There has to be some give and take in this as you all know. You know the process of the Government better than I do.

The CHAIRMAN. Mr. Moss, any questions?

Mr. Moss. None.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Sandbach, have you ever been engaged in the manufacturing of any food products?

Mr. SANDBACH. Not in the manufacturing itself, no.

Mr. SPRINGER. You are the manager at the consumer level?

Mr. SANDBACH. I have been at the retail level dealing with the housewife.

Mr. SPRINGER. Have you heard any of the testimony here with reference to the cost?

Mr. SANDBACH. I have read some of the testimony with reference to cost.

Mr. SPRINGER. Did you read Kellogg's testimony?

Mr. SANDBACH. Kellogg's? No, I did not.

Mr. SPRINGER. As the executive director of the Consumer Union have you ever made any research or done any research in any countries where the uniform packaging and labeling is by statute?

Mr. SANDBACH. No, I have not.

Mr. SPRINGER. Do you know of any countries that have?

Mr. SANDBACH. Not specifically, no.

Mr. SPRINGER. Have you ever had a chance to compare the costs of packaging in a country where you have what you call a fair labeling statute, or what I would call standard labeling and packaging?

Mr. SANDBACH. No.

Mr. SPRINGER. Therefore, you don't know anything, really, about what this would do, do you, on cost?

**Mr. SANDBACH.** I have some ideas from my experience in the super-market operation, and I have my faith in the ingenuity of the American businessman.

**Mr. SPRINGER.** Mr. Sandbach, that is only faith, we are talking about facts and figures because we have a lot of opinions about this bill on other matters. On this question of cost, those are capable of proving or not capable of proving. Now the day before yesterday Kellogg testified here and made a comparison of two factors of approximately the same size, one in the Union of South Africa and one in Mexico. In Mexico there is no uniform labeling, grading or weights law with reference to packaging. In the Union of South Africa there is. This is the only one I know of, the only one on which any testimony has been given, but they did give accurate testimony that it costs 51 percent more to package in South Africa than in Mexico and most of this was the labor cost.

**Mr. SANDBACH.** Well, there are a lot of things I would like to know about the South African experiment because you know and I know that the efficiency of one group of laborers as against another could be very, very different.

**Mr. SPRINGER.** You will have to admit, though, Mr. Sandbach, that when testimony is rendered that it costs 51 percent more under uniform weights and measures and packaging in one over what it is in another country of approximately the same size, and I think you would suppose about the same consumer level as the other. That is rather substantial, is it not?

**Mr. SANDBACH.** That is rather substantial but I don't think it means very much.

**Mr. SPRINGER.** They don't contend that that would happen in the United States.

**Mr. SANDBACH.** It would not.

**Mr. SPRINGER.** They are giving you a picture of what two countries did where you did have it and one where you did not have it. Most of the testimony, Mr. Sandbach, if you didn't read it is in the nature—the best I can make it, I have run through this testimony and I have not found anybody less than 2 percent of increase. I am talking about uniformity of year to year but some of this runs as high as 8 percent.

I am throwing out the first cost for the first year which would be substantial. Now I think as one who has recommended legislation at the consumer level you ought to be acquainted with all the information if you are going to recommend to the consumer certain legislation. Now I don't know how friendly the thought, maybe this was good legislation in the public interest but I want to be sure that when we come out of here with a bill we are not going to be over on the floor with something called the fair packaging and labeling bill, we will be over there with a bill which would be labeled, "A bill to increase consumer prices."

**Mr. SANDBACH.** Just let me say that I remember the industry testimony several years ago when the airlines were still interested in subsidies and they were telling Congress how much money they were going to lose on these jets that they were bringing into operation and they had all of their studies and all of their figures showing that these

jets were going to lose them a tremendous amount of money because they still wanted subsidy.

Now these jets are making money hand over fist and I don't know where all these studies are that showed they were going to lose money on the jets.

Mr. SPRINGER. You are talking about airlines now?

Mr. SANDBACH. Yes.

Mr. SPRINGER. Mr. Sandbach, some of us are experts in that field. Your testimony on that is directly wrong. There was never any testimony that I ever heard anything but jets were economical, always have been, and have been from the very time that Boeing projected the first one, much more economical than the prop.

Mr. YOUNGER. Would the gentleman yield?

Mr. SPRINGER. Yes.

Mr. YOUNGER. Those lines are not under subsidy. Certainly if your testimony in this packaging field is not any more accurate than the airline data, then it certainly is not going to be of much weight.

Mr. SPRINGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. No questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. No questions.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Sandbach, would you establish some priorities in this legislation, what you consider the most important section of all and what might be less important?

Mr. SANDBACH. I think that President Johnson said it better than I can say it. He made three points:

1. Require that each package provide simple, direct, accurate and visible information as to the nature and quantity of its contents, including ingredients where this is important.
2. Keep off the shelves packages with deceptively shaped boxes, misleading pictures, confusing or meaningless adjectives, inappropriate size or quantity markings and promotional gimmicks that promise nonexistent savings.
3. Provide for the establishment of reasonable and appropriate weight standards to facilitate comparative shopping.

That says it better than I can say it.

Mr. VAN DEERLIN. Is packaging more important, you think, than labeling?

Mr. SANDBACH. I would say it is hard to say. They are both important, extremely important. I don't know how you are going to put one ahead of the other, I think you need both.

Mr. VAN DEERLIN. Well, my impression is that we are not going to get this whole bill and I was wondering what you might establish in the way of the most important as a guideline for us.

Mr. SANDBACH. I think the three items outlined by President Johnson are a minimum. I don't think this bill goes far enough, personally. I think these are the minimum that you ought to try to get into the bill and I hope you can.

Mr. VAN DEERLIN. Like the words in the song, it is all or nothing.

Mr. SANDBACH. I don't think this is all or nothing. A lot was given away already before the bill arrived at this stage.

Mr. VAN DEERLIN. You don't see any area for concession?



Mr. SANDBACH. Not on these three items I don't, no.

Mr. VAN DEERLIN. Thank you.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

You made reference to a product where the print was so small that the housewife was deceived by the weight content. You must certainly be aware of the fact that labeling is now regulated and if there is an area where the consumer is not adequately informed because of lack of readability there are recourses under the present law and certainly someone in authority is not exercising their authority.

Do you have any comment on that?

Mr. SANDBACH. Yes; I do. I didn't include it in my testimony but here is another package.

Mr. NELSEN. What do you propose to do——

Mr. SANDBACH. Top Brass.

Mr. NELSEN. I have limited time. Give me a quick answer. I have other questions.

Mr. SANDBACH. I would say pass the bill because under the present law if the Federal Trade Commission wants to take action they have to take individual action against this one item. Under the new law they will be able to bring together all of the producers of this type of product and take the whole product category as one instead of having to go against each individual company, and according to Rand Dixon this will make a tremendous difference.

Mr. NELSEN. In other words, you choose to proceed on the theory that you are guilty until proved innocent. In other words, you might go to court and you might be the victim and I am sure that in such a case you would not be as friendly to the idea.

Now let's get back to packages. Because one had a lighter, fluffier product than the other, you claim that this was deception, yet you want standard size packages. So we will say that in the case of the new product Chex it is required that the same weight be in the box, therefore the box must be bigger. The same weight, the same price. So then there is deception of another kind in that a bigger box would appear to be a better bargain than the smaller box. It seems to me that you can't have it both ways. If you want it standardized and if the consuming public wants a fluffier product, are you going to say that the public should not have it, and they don't need it?

Mr. SANDBACH. Not at all. I suspect that one of the areas where I would like to see the bill strengthened, and the Department of Agriculture in its testimony pointed out that any company that was going to make a change in meat products which they have the jurisdiction now they would have to get approval before they made the change. I have not heard any great outcry from Congress or the consumer or the manufacturers of the companies that are controlled by the Department of Agriculture. Their label cannot be changed without getting their approval.

Mr. MOSS. Would the gentleman yield?

Mr. NELSEN. Yes.

Mr. MOSS. Is it not true that the Department does not control the packaging as such, just the label?

Mr. SANDBACH. That in this case would be involved.

Mr. Moss. No, I say as a matter of fact isn't it true that the Department of Agriculture does not control the packaging?

Mr. SANDBACH. It depends what you mean by packaging.

Mr. Moss. Well, the box that it is put in.

Mr. SANDBACH. Well—

Mr. Moss. They control the label, is that not true?

Mr. SANDBACH. Well, how can you divide the label from the package?

Mr. Moss. Well that is very simple.

Mr. SANDBACH. I can't see it.

Mr. Moss. Well, you just have a label and you stick a label on a box. That is how you can separate it. I don't see how you can't see that.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Mr. Chairman, one more question.

I notice your point 1 says, "Require that each package provide simple, direct, accurate and visible information as to the nature and quantity of its contents, including ingredients where this is important."

This is presently covered in the law. It seems to me that your testimony leans to the fact that agencies downtown with authority have not exercised their authority. Also I might point out that to me it is a little ridiculous to say that if a housewife would like to have a whipped shortening, we should give her a new recipe book and a recipe that tells the difference between the measurements required using the new and the old product.

It seems to me this would be going a little too far. Our committee is desirous of seeing to it that the public knows what is in the package, and how much it weighs. The pricing to a greater degree is in the retail market and they mark the price and there may be instances of deception in the marketplace by the retailer.

I cited one the other day and I went back last night and checked. The "four for 98 cents" display was still there. Well, there was a little room in the middle of the display for the "4 for 98 cents" item, but the surrounding items were priced at 47 cents a pack. That was intended to fool me but it didn't the second time. I didn't buy any more of the product.

Thank you.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Sandbach, I am sorry I was in and out on phone calls and that sort of thing, that we run into here. I didn't hear all of your statement but I was in the room when you testified with reference to Carnation Instant Breakfast, where the lady complained that they had a 10-cents-off coupon and she went to the store with her coupon and purchased the Carnation Instant Breakfast and got home and found out that she paid 69 cents for the coupon and pulled the sticker off and found under that the price 69 cents. So she says, it ended up costing her what it should have cost her all along. Of course that assumed they raised the price 10 cents and came out with the coupon.

That would appear to me to be an obvious case of deceit and unfair trade practice.

Now that was reported to you, I believe. Did you in turn turn that over to the Federal Trade Commission?

Mr. SANDBACH. I don't know about this specific one but we have called to the attention of the Federal Trade Commission many of these and we have advised housewives to also call it to their attention.

Mr. KORNEGAY. You have in certain instances turned these matters over to the Federal Trade Commission?

Mr. SANDBACH. Yes.

Mr. KORNEGAY. Under the present law the Federal Trade Commission has the power and authority and the duty to prevent unfair and deceptive trade practices?

Mr. SANDBACH. Yes, sir.

Mr. KORNEGAY. In your opinion would this not fall in your category of unfair?

Mr. SANDBACH. Yes.

Mr. KORNEGAY. Where the law covers that situation, does it not?

Mr. SANDBACH. Not adequately, no.

Mr. KORNEGAY. How is that?

Mr. SANDBACH. Not adequately, no.

Mr. KORNEGAY. How adequate can you get?

Mr. SANDBACH. Because it is too difficult to take these item by item through the court process. If all of the manufacturers of this product can be brought in together and the agency can say, "This is the problem, there is deception involved, and how are we going to work it out," and the new rules of the game are set, then you settle it over a whole product line instead of having to go item by item through the courts which takes forever to get the thing straightened out.

Mr. KORNEGAY. I don't know how under any law you are going to prevent this. Under any law you have got to have some sanction, some enforcement provision. In order to enforce any rule or any law this has got to be done on a case-by-case basis, has it not?

In other words, one company, you might move to the next company and they didn't participate in this kind of deceptive practice. What are you going to do with them?

Mr. SANDBACH. I personally would like to see cents off banned, for example. This law does not do it. It is voluntary on the part of Federal Trade and in working it out with industry.

Mr. KORNEGAY. I was going to say next this law does not prevent cents off.

Mr. SANDBACH. I wish it did.

Mr. KORNEGAY. It does not really get to the point I think you are trying to make and that is control over the retailer because it is in the retailer market where the price to the consumer is actually set.

Mr. SANDBACH. Right, but what I am saying is not that you are getting the control of the retailers, but that where there are areas, like cents off, where the retailer does deceive, then ban that whole program of activity so that the retailer can't deceive with it.

Mr. KORNEGAY. How are you going to do that unless you proceed against the man who is deceived? That is what I am getting at. I have heard talk from Mr. Dixon and you about the problem but I don't think he, you, or the committee or anybody else wants to punish any innocent people. What we are trying to do and we are anxious to do is to get at those sharp practices and sharp traders who are deceiving and using the public.

Mr. Moss. Will the gentleman yield?

Mr. KORNEGAY. Yes, sir; I will be glad to yield.

Mr. Moss. You say you want to ban this "cents off"?

Mr. SANDBACH. Yes.

Mr. Moss. Is there anything wrong with it where it is done honestly and correctly?

Mr. SANDBACH. Why I think it should be banned is that the manufacturer has no control over that price.

Mr. Moss. I am not asking you that question. I am saying is there anything wrong with the practice if it is honestly done? As a matter of fact, it is a savings for the consumer isn't it?

Mr. SANDBACH. Right.

Mr. Moss. So you are now telling us you don't want a savings in effect for the consumer if it is honestly done.

Mr. SANDBACH. No. The manufacturer can pass that on in a price decrease.

Mr. KORNEGAY. I am not arguing with you, I am trying to find out more about the situation because I am not an expert. Suppose we did say that the manufacturers did not participate or put labels on any product that indicates "cents off." What is thereto prevent the consumer from coming in, and he has a stock of slow-moving items, so he himself puts a sign up and says "4 cents off on each one of them."

Mr. SANDBACH. There would be nothing to prevent him from doing that.

Mr. KORNEGAY. Those are the problems that I am having as an individual legislator and how to write a law that will take care of the situation.

Mr. SANDBACH. Let me give you an example. It used to be that "cents off" was used as a promotion device to bring a new item onto the market. During recent years there have been times when, for example, you could not find any powdered coffee on the shelf that did not have "cents off." It became standard to have a "cents off" label. In many instances the retailer marked up the price and there really was no savings to the customer.

Mr. KORNEGAY. We get back to the fact that it is not covered by this bill.

Mr. SANDBACH. Right, but as I understand this bill, does give the Government the power to bring it every manufacturer of "cents off" of powdered coffee and say, "We have had a problem in this area where there has been a lot of deception and the new rules and regulations are going to be that there will be no cents off labels on powdered coffee."

Mr. KORNEGAY. I am not familiar with the brand that you are referring to, but I am sure each one of those containers or the label on each of those containers has the quantity of coffee contained on it, does it not?

Mr. SANDBACH. Right, and they jump all over.

Mr. KORNEGAY. Regardless of what the "cents off" is, they have got the actual price to the consumer.

Mr. SANDBACH. You have several problems in powdered coffee because the sizes jump all over the lot, so you can't compare one brand with another. One is 6 ounces, another is 5½ ounces, another is 7½ ounces. How is the housewife going to make a realistic price com-

parison between these various items when in addition you have cents off which the housewife has to take into her calculation? Industry says the housewife is a computer, but she is not really.

Mr. KORNEGAY. In other words, if all of them were in the same size container for the same quantity—

Mr. SANDBACH. It would be much easier for the housewife.

Mr. KORNEGAY. Then the housewife could add that into the cost to determine the cost per ounce to determine which is the best buy.

Mr. SANDBACH. But this bill, as I understand it, also provides that if the Federal Trade Commission or Food and Drug found that there was a great deal of deception with the use of "cents off" in some particular product, they could ban it from that product area.

Mr. KORNEGAY. I am very much opposed to any deception and unfair practices completely; however, I do have some concern of some of the sections in this bill which in the end might cost the consumer more than he is saving if the situation is as it has been presented to us by some.

Now I believe you are with the Consumers Union up in Mount Vernon.

Mr. SANDBACH. Yes.

Mr. KORNEGAY. At one time you ran a supermarket.

Mr. SANDBACH. I was general manager of Hyde Park Cooperative in Chicago which was made up of 10,000 families.

Mr. KORNEGAY. I am an infrequent shopper, but one of the biggest troubles I have in the supermarkets is finding what I am looking for. In other words, it takes me maybe 10, 15 minutes' wandering around the big ones to finally come to the coffee you are talking about or the margarine or the salad oil. What would you think about standardizing the markets? In other words, you have got to have the coffee in certain places and all the various products so that a person who has not been in there can go right to the shelf or the counter or the stack of the merchandise he is looking for.

Mr. SANDBACH. I would much rather do what we did in the supermarket I managed in Chicago. As you came in the store, we give you a shopping list which showed you exactly where everything in the store was.

Mr. KORNEGAY. A diagram?

Mr. SANDBACH. Not a diagram, but aisle 1, aisle 2, aisle 3, so you could take this home. Your wife would fill it out on this list so you could just go down aisle 1 and get everything under 1; aisle 2, et cetera.

Mr. KORNEGAY. Do you think that would be a better system than saying they had to put all the soups and canned vegetables on aisle 1, if that is what you call it, and all your cornflakes and cereals on aisle 2, and on down the line?

Mr. SANDBACH. I really don't think that the Government should go so far as to determine where things ought to be put. I think the housewife—I am like you, you and I go in only infrequently—does learn where things are located in a regular supermarket.

Mr. KORNEGAY. My point is this. Now my time on Saturday afternoon is probably not too valuable, but time is of value to most of us. If the purpose of this bill is to save the consumer money, then if I can go in there and spend half as much time in the supermarket and di-

really find what I want to find, then assuming my time is worth \$1.00 an hour, as the minimum wage, then I save maybe more than I would as a result of the package that the man provides.

Mr. SANDBACH. If the bill will result in standardization of sizes, it may also save you some time in your shopping, yes. They won't take up so much space on the shelf.

Mr. KORNBLAY. I spend more time locating the salad oil than I do making up my mind which one I want to buy.

Mr. SANDBACH. I have no answer to that.

Mr. KORNBLAY. Thank you very much. We appreciate your coming.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Sandbach, as I understand your testimony, you feel that the Government must standardize packaging.

Mr. SANDBACH. Wherever reasonable and feasible, yes.

Mr. CURTIN. Well, what do you consider standardization of packaging?

Mr. SANDBACH. I gave you a few examples. It seems to me that in cake mixes where each package is a separate recipe—you have the sugar, you have the flour, and one recipe calls for two eggs, one calls for one. Well, obviously, you are going to have a different size package or you are going to have air space in there.

I am saying there are enough items like this that need space on the shelf that we ought to standardize, and industry won't do it itself because of the competitive business that goes on between companies. We should standardize the items where it does not make any difference.

Now on salad oil which is just oil, let's have pints, quarts, half gallons and gallons. Why do we need 12 ounces, 14 ounces, 16 ounces, 18 ounces, 20 ounces? It does not make any sense.

Now there are a lot of items in the supermarket where this standardization can be done without any inconvenience to the housewife and in fact it will make it easier for her to compare prices and competition will be more direct.

Mr. CURTIN. I believe you also expressed some criticism of bottles that are odd shapes and sizes and, as I believe you said, "voluptuous."

Mr. SANDBACH. Yes.

Mr. CURTIN. What would you do with the specially shaped containers and packages that many companies use to identify their product? Would they have to be eliminated?

Mr. SANDBACH. Do you have an example?

Mr. CURTIN. Well, supposing you take some of your salad oil bottles. If the container, over the years, has been in a certain shape, do you think that the special design should be eliminated—it ought to be just an ordinary bottle?

Mr. SANDBACH. I don't think so. I gave salad oil as an example because it seemed at the time to me as a grocery operator that there was an obvious deception. The company had decreased the size 2 ounces so that the bottle on the shelf made a bigger appearance than the old size. The prime example was in cereals when everybody started coming out with—one company first came out with a very thin box that was too tall, it would not go into my wife's cupboard, but it took up more shelf space so they got more spacing on the shelf.

But the other companies were not going to let them get away with that, so they came out with a thin box, and pretty soon we had all these thin boxes that would not stand up by themselves and would not go in the housewife's cupboard.

Finally, some sense came into the cereal industry, and they started going back to reasonable sizes and shapes, but just as sure as I am sitting here, somebody will again start to make a shape to get more space on the shelf and then the thing begins all over again.

Mr. CURTIN. That does not quite answer my question. My question is, if a company over the years has had a certain shaped container—

Mr. SANDBACH. Coca-Cola is the prime example.

Mr. CURTIN. Coca-Cola, or we can take the old pancake sirup, I think they called it Log Cabin Syrup—it came in a container shaped like a small toy log cabin—or Carter's mucilage, they all have specially shaped containers. When you go to the market, you look for that container.

Now, would you eliminate all that type of packaging?

Mr. SANDBACH. No.

Mr. CURTIN. How are you going to standardize packaging if you let each company use its own shaped container?

Mr. SANDBACH. I think you have a good bill that gives the Federal Trade Commission and the Food and Drug Administration discretion to work with the problems in each industry and use discretion to see what can be done.

Mr. CURTIN. As I understand your answer, you feel that it should be discretionary with the Government to decide whether there should be specially shaped containers.

Mr. SANDBACH. The bill allows that now.

Mr. CURTIN. You are in favor of that?

Mr. SANDBACH. Yes.

Mr. CURTIN. Now another example you gave was a new product on the market, I think you called it whipped shortening.

Mr. SANDBACH. Whipped shortening.

Mr. CURTIN. Which was in a size can which normally contained 3 pounds of the more solid kind of shortening.

Mr. SANDBACH. Yes.

Mr. CURTIN. But, because it was whipped, there was only 2½ pounds in that 3-pound sized can.

Mr. SANDBACH. Yes.

Mr. CURTIN. Did the label on the outside of that whipped shortening can give the weight of the contents?

Mr. SANDBACH. Right. The whipped shortening can says plainly, 2½ pounds. My wife, without reading the label, picked it up, and the only thing that made her read it finally was that it seemed so much lighter than she was used to, and she looked and found it said 2½ and saw "whipped" on it. Because she knows I am testifying here she is looking for all of these things and she brought it home to show me, it was the one she was used to buying. They come out with a new product and they put in enough air to get the same amount into a 3-pound can. Frankly, I don't see the sense in it.

Mr. CURTIN. You don't see the sense in what—whipped shortening?

Mr. SANDBACH. Whipped shortening.

Mr. CURTIN. Maybe the housewife demanded and likes whipped shortening.

Mr. SANDBACH. I am sure they have a market survey proving she wants it.

Mr. CURTIN. Shouldn't that be the criteria?

Mr. SANDBACH. I don't believe that market survey because I know how you can ask these questions.

Mr. NELSEN. One more question.

Mr. MACKAY. I yield my time.

Mr. NELSEN. I was wondering, did they fool your wife the second time?

Mr. SANDBACH. No, they didn't fool my wife the second time.

Mr. NELSEN. There is an old saying, "Fool me once, shame on you; fool me twice, shame on me."

Mr. SANDBACH. Let me give you an example where my family actually were fooled. I gave you an example. Diet-Rite Cola, where they changed from six 16-ounce bottles to eight 10-ounce bottles, my wife brought this new package home, my kids immediately knew that they had less in the bottle even though we didn't have the old ones right there, but the kids said immediately, "I am not getting as much coke." But they said that was OK; before they were drinking a half bottle of the 16-ounce, so now they were drinking a full bottle. Actually I am losing money because they are drinking 10 ounces instead of 8 ounces.

My wife, when she checked the price, which the average housewife may not do, found we were only getting 80 ounces for 67 cents; before we were getting 96 ounces for 65 cents. My kids were willing to settle for these new small bottles, but it is going to cost me a substantial increase in the cost of living in cokes because of the fact of this change in packaging practice.

Mr. NELSEN. Mr. Chairman, it seems to me that——

Mr. SANDBACH. You can fool the housewife.

Mr. NELSEN. The Government is going to have to do the reading, the writing, the picking, the choosing, the advising. We are going to have a pretty big expense in the Government to deal with. I am fearful of any bill that is going to give the Federal Trade Commission or any other agency the right to make the decision as to whether you are guilty or not guilty and make it punishable by a heavy fine. All they have to do is say, "This is a violation of our rule, you are guilty." And that is all there is to it. It seems to me that is going pretty far when we see what goes on in various areas of government today.

You are going to put into the hands of bureaucracy authority that is going to be so powerful and so vast that it is frightening.

I yield back to Mr. Mackay.

Mr. SANDBACH. May I say one thing to Mr. Nelsen? It seems to me you have provided a bill which gives plenty of protection for the industry to have their say before these rules go into effect.

Mr. NELSEN. Not before.

Mr. SANDBACH. Sure.

Mr. NELSEN. They would not be in the position to develop a new product because they would not know if this product or the package would be acceptable to those in authority until after it is on the shelf,



and they might at that point find that it would be completely wiped out by an edict of the Government.

I yield back. You have the time, Mr. Mackay.

Mr. MACKAY. I yield to Mr. Younger.

Mr. YOUNGER. I just wanted to correct the record a little.

You said the committee brought out a good bill. We have not brought out any bill yet. I just wanted you to know that.

Mr. SANDBACH. You have a good bill before you in my opinion.

Mr. YOUNGER. Yes.

Mr. CURTIN. Mr. Chairman, will the gentleman yield?

Mr. MACDONALD (presiding). Yes.

Mr. MACKAY. Yes.

Mr. CURTIN. Mr. Sandbach, your answer to my last question opened a very interesting line of thought. Do I understand that you don't think there should be whipped shortening on the market because you don't think the housewife wants it?

Mr. SANDBACH. I don't know really, and this is the kind of thing I hope that under this bill the various Government agencies would have discretionary authority to study and to hear the industry's reasons for it, to look at their market surveys and perhaps do some market surveys of their own before a decision is made.

Mr. CURTIN. I don't want to seem to hurry you, but my time is limited, so I would appreciate it if you would make your answers more brief.

Do you think the Government should decide what products; or innovations, should be put on the market?

Mr. SANDBACH. I think the Government ought to be in a position to ask some questions.

Mr. CURTIN. I see. In other words, you would be against innovation by the manufacturers of various new products?

Mr. SANDBACH. I am against unlimited innovation by manufacturers.

Mr. CURTIN. One other question. Just recently there was put on the market a whipped margarine as a supplement to the solid sticks or blocks. Do you think that new product should have been put on the market without Government consent?

Mr. SANDBACH. I can see more sense—for a long time in the food business we have had whipped butter and whipped margarine, and it is not completely new. Other companies brought it out earlier. I can see some reasons for this because if you have a large family where the kids tend to overuse on butter and margarine, as my kids tend to do, by whipping it, you may fool them into using less, so that there is some gain, but in the shortening business I don't see it. Maybe there is a reason, but I don't see it.

Mr. CURTIN. Who do you think should decide whether there should be whipped margarine on the market, the Government or the housewife?

Mr. SANDBACH. Well, my feeling is that the Government represents the housewife better than the manufacturer actually.

Mr. MACDONALD. I am sorry, the time is up.

Mr. SANDBACH. I will trust the Government over the manufacturer.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. I am going to yield to the gentleman from Pennsylvania.

Mr. CURTIN. Thank you.

Now you say that you feel that it is wrong that the various salad oil bottles should be on the market in other than—I think you said—pints, quarts, and half-gallon sizes.

Mr. SANDBACH. And a gallon.

Mr. CURTIN. You don't see any reason for other sizes?

Mr. SANDBACH. I don't see the need.

Mr. CURTIN. Do you consider that the housewife might want those different sizes?

Mr. SANDBACH. I just don't see why she would.

Mr. CURTIN. I see. Don't you think that the manufacturer or producer would only put them on the market if there was a proven demand for such sizes; therefore, don't you think he has researched as to whether the housewife wants salad oil in a 12-ounce bottle rather than in a quart?

Mr. SANDBACH. Having been in business for 25 years of my life, I know that it is possible through advertising and promotion to create demands in the minds of the housewife, and I have done it myself. The manufacturers are better at this than I am, and they have their own public relations and their advertising geniuses that make the housewife want something that she never knew she wanted.

Mr. CURTIN. In other words, you again say that the Government should decide whether the housewife wants a 14-ounce bottle of salad oil rather than a quart?

Mr. SANDBACH. Again I would say that I trust the Government more than I do the manufacturer when it comes to interpreting what the housewife wants. Somebody has to make the interpretation.

Mr. CURTIN. Would you agree that the manufacturer or producer is not going to put a product on the market and keep it there unless there is a sale for it?

Mr. SANDBACH. Yes; but with his advertising and promotion he can do most anything.

Mr. MACDONALD. Would you yield to me for a question?

Isn't your point not the one Mr. Curtin is bringing out? What you object to is having the manufacturer put 12 ounces of a substance into what had been a 16-ounce package. Isn't that really your objection?

Mr. SANDBACH. I have two objections really. In the case of the salad oil they were not putting it into a 16-ounce bottle, they were putting it into a newly designed bottle that looked bigger than the old size in some cases because of the way they designed it.

Mr. MACDONALD. It is hardly the type of free enterprise that all of us would stand up for, do you agree with that?

Mr. SANDBACH. But there has been a lot of it going on.

Mr. WATSON. Would the gentleman yield?

Mr. BROYHILL. Yes.

Mr. WATSON. Do you say that the Government is in a better position and you would rely upon the Government to interpret what the housewife wants rather than industry? Did you not make that statement?

Mr. SANDBACH. Yes.

Mr. WATSON. Why does either industry or the Government have to determine or interpret what the housewife wants? This is an amazing

situation that we are getting into. Do you not infer or believe that if the Government steps in with these controls that there will be a reduction in the proliferation of both sizes and shapes of packages? You believe that, don't you?

Mr. SANDBACH. There will be a reduction, yes.

Mr. WATSON. There will be?

Mr. SANDBACH. Yes.

Mr. WATSON. Let's quote from the prevailing regulation, volume 30, No. 177. This is on one item, and this is the Government dealer.

The U.S. Department of Agriculture has 12 grades of the simple little olive. The grades are supercolossal, colossal, jumbo, giant, mammoth, extra large, large, medium, standard, or select, small, midget, and peewee.

That is your Federal Government agency. [Laughter.]

Now, your Federal Government agency set that up and—

Mr. MACDONALD. The time has expired.

Mr. WATSON. I will have a little time later on.

Mr. MACDONALD. We will recognize you. You were on Mr. Broyhill's time.

Mr. WATSON. So you believe the Government has done a good job regarding the various 12 classifications of olives?

Mr. SANDBACH. No, I would not say that.

Mr. WATSON. You don't?

Mr. SANDBACH. No.

Mr. WATSON. Have you ever protested?

Mr. SANDBACH. Certainly I have protested.

Mr. WATSON. You have?

Mr. SANDBACH. Yes. I think that is one of the worst examples of grading. That is one of the cases where the Government and industry got together to set up standards, but the industry did most of the setting.

Mr. WATSON. Now you are accusing the Government of conspiring with industry, is that it? [Laughter.] Is that what you are saying? What is to prevent it from happening if this bill passes?

Mr. SANDBACH. This bill will indicate that Congress has a little more interest in the consumer than on the industry side. Too often with the Government agencies, industry has had too much influence. I think the consumer ought to have more influence.

Mr. WATSON. Mr. Sandbach, let's get a little background. The consumers Union, how long has it been in effect?

Mr. SANDBACH. It is 30 years old this year.

Mr. WATSON. Is that the original name? Wasn't it originally the Consumers League, and then it developed into the Consumers Union?

Mr. SANDBACH. Since our founding in 1936, our organization has been known as Consumers Union.

Mr. WATSON. Somewhere during the course of its operation the union has experienced a rocky road, has it not?

Mr. SANDBACH. That is an understatement, I would think.

Mr. WATSON. That is an understatement to be sure. I just wanted to know what organization—

Mr. SANDBACH. Fighting for the cause of the consumer has not always been as popular as it is today. As a result we have, over the years, been called a good many things.

Mr. WATSON. Are you advocating, though, that the Government interpret what the housewife wants? What else would you interpret that as being? You are for standardization, aren't you?

Mr. SANDBACH. I am for reasonable standardization with Government-industry cooperation.

Mr. WATSON. Voluntary standardization.

Mr. SANDBACH. I think the Government and industry should have the final say before it goes into effect.

Mr. WATSON. On page 2 you state in the second paragraph: "The opponents to packaging legislation, as a matter of fact, seemed to be singularly disinterested in the marketplace itself, or in packaging practices as they are evidenced there."

Do you really believe that industry is disinterested in the marketplace which they actually depend upon for their profits and for their survival in order to give jobs to people?

Mr. SANDBACH. The industry in my experience in business, and I have been at the retail end of it, is that they are very, very—

Mr. WATSON. Yes, sir; but at the retail end you were in the cooperative, weren't you?

Mr. SANDBACH. Yes.

Mr. WATSON. You were not in a regular retail grocery store.

Mr. SANDBACH. I don't see any difference, since we have 20,000 customers coming in there to buy in the supermarket every day.

Mr. WATSON. Yes, sir; but it is cooperative and there is a difference.

Mr. SANDBACH. The only difference is that our profits went back to our members at the end of the year.

Mr. WATSON. Yes.

Mr. SANDBACH. But industry has great ability and great competence in their ability to manipulate the marketplace.

Mr. WATSON. You mentioned earlier that your wife—and I feel certain that since you are executive director of this Consumers Union, she is particularly interested in shopping, and you would consider her an able shopper.

Mr. SANDBACH. Yes; I would say so.

Mr. WATSON. Then you made the statement that she went in and picked up this whipped shortening or whatever it is and didn't even bother to look at whether it was 2½ or 3 pounds? Didn't you make that statement?

Mr. SANDBACH. Yes.

Mr. WATSON. I see. And she is a very able shopper. Well now, how do you ever hope to cope with such a problem as that if people just go in and pick up a package and never bother to look at the weight and just hope, as happened in her case, that she noticed the difference in the weight?

Mr. SANDBACH. Just let me answer you.

Mr. WATSON. Unless the Government provides a guide for each shopper as they go in the marketplace and then we can go around and make these comparisons for them.

Mr. SANDBACH. This is one reason that I hope that through this bill the agencies will be able to work out with and cooperate with industry in the standardization of certain items. My wife had assumed that shortening was standardized, was one item she didn't have to

check. It has been 1 pound and 3 pounds for as long as I can remember. I have been in the business a long time.

Mr. MACDONALD. I am sorry, the time has expired.

Sir, I want to congratulate you on your statement as introduced. I read it and I think it is a very fine statement. I would like to point out to you that if you read the bill, and you said that you hoped we would bring out a good bill—if you read the bill carefully, there was no mention of standardization in that bill. Therefore, I think some of your answers to the questions that were proposed to you express your feeling that there should be standardization.

I point out to you that if you read the bill carefully, there is no proposal in the bill that there be standardization.

Mr. SANDBACH. No; I realize there is no proposal in the bill that there be standardization.

Mr. MACDONALD. We appreciate your views. You certainly have the experience to express yourself well, as you have, but I just want to point out to you the bill we are considering does not propose standardization.

Mr. WATSON. Mr. Chairman.

Mr. MACDONALD. I yield.

Mr. WATSON. I agree with the chairman's interpretation, but I think it is important to have the testimony of this gentleman who is one of the proponents of this legislation. I believe you are making legislative history here, and the House should be interested, should it be reported out, in knowing what is the ultimate objective of the proponents of this legislation, and that is standardization.

Mr. MACDONALD. I point out to the gentleman, as I did the other day, the word "standardization," the witness has nothing to do with marking up bills; the gentleman from South Carolina and myself and all the other members will determine whether or not that should be included.

I just have one question, sir, which I didn't really understand; on page 6 you talk about Diet-Rite Cola.

Mr. SANDBACH. Right.

Mr. MACDONALD. You say that they had six 16-ounce bottles for 65 cents plus deposit.

Mr. SANDBACH. Right.

Mr. MACDONALD. Then they changed and came out with a new carton, from six bottles in the carton to eight bottles in the carton for 67 cents, with a big sign, you say, on each carton saying, "Two bottles free."

What they did not advertise was the fact that in changing from a six-pack to an eight-pack, they had reduced the size of the bottles from 16 ounces to 10 ounces.

Well, under the present law, isn't it required that they do that?

Mr. SANDBACH. You see, this is again an area where the deception creeps in. On the carton here it says 10 ounces. You don't have the old 16-ounce bottle there. The way they are designed, narrower and taller, it is very difficult for the housewife to know whether any change has been made. Maybe she looks and reads and sees this 10 ounces, maybe she remembers or maybe she does not, that that was 16 ounces before. Again here we have a deceptive practice.

If this became widespread in the soft drink industry, I would hope that under this bill the Government agency could call in the manufacturers and set new rules of the road so that this could not happen because this was a hidden price increase just as the Wheat Chex was a hidden price increase.

I hope that you give enough discretion to the Government agency so that they can set rules of the road where they are necessary, including standardization of sizes. If the bill does not do that, I hope you will make it strong enough so that they can.

Mr. MACDONALD. Thank you very much, Mr. Sandbach. Your full statement will be made a part of the record.

You are excused, sir. Thank you very much for your testimony. (Mr. Sandbach's full statement follows:)

STATEMENT OF WALKER SANDBACH, EXECUTIVE DIRECTOR, CONSUMERS UNION, MOUNT VERNON, N.Y.

During the five years that the problem of deceptive packaging has been under consideration by the Congress, there has been remarkably little discussion of the basic issue. Consumers asking for the legislation have said: "We can't compare prices." Industry spokesmen opposing the legislation have said all manner of things, but on this central issue what they have said comes out to little more than, "You can, too." Packagers have discovered, since this legislation was introduced, that the American female possesses an astonishing ability to calculate. This heretofore unnoted phenomenon has won great plaudits from industry and has been under the subject of some of Madison's Avenue's most untrammelled prose. In full page newspaper ads, the Scott Paper Co., for example, has hailed the American housewife as "The Original Computer." " \* \* \* a strange change comes over a woman in the store," read the ad. "The soft glow in the eye is replaced by a steely financial glint; the graceful walk becomes a panther's stride among the bargains. A woman in a store is a mechanism, a prowling computer \* \* \*. Jungle-trained, her bargain-hunter senses razor-sharp for the sound of a dropping price. \* \* \*"

None of these lady panthers, however, have thus far come to testify before any of the Congressional hearings on packaging. The shoppers who did appear belonged to a lesser breed. They were fully aware, their testimony indicated, of the jungle aspects of their buying experiences, but they failed to undergo that metamorphosis so necessary to successful shopping in today's supermarket. They remained, alas, all too human. "We simply couldn't make price comparisons," they said. But opponents to packaging legislation, having provided the obvious answer to this repeated complaint—turn yourself into a panther and prowl with a computer—have exhibited little further interest in the subject.

The opponents to packaging legislation, as a matter of fact, seemed to be singularly disinterested in the marketplace itself, or in packaging practices as they are evidenced there. Aside from noting that there are 8,000 different items to choose from in the average supermarket and that an increasing percentage of these are new, the packagers have focused their attention on such matters as: the remarkable achievements of American industry, the questionable ethics of certain consumer-minded officials and Congressmen, the dire consequences to creativity and freedom associated with interference in the market, and the contentment and happiness of consumers with things as they are.

There is, of course, nothing reprehensible in bringing up these matters for consideration. Creativity, freedom and ethics have long been, and should continue to be, of concern to mankind and these large issues are, indeed, involved in the packaging problem. And as for the happiness and contentment of the nations' citizens as consumers, the preservation of good faith in their day-by-day dealings with one another in the exchange of goods is precious, indeed, much too precious to be hazarded for lesser goals or for private ends. But it is disappointing that the packagers have presented so little information about the more specific issue before us because they are, after all, the ones who have access to the full record of packaging practices.

The Senate Commerce Committee hearings on a similar bill brought out that there were 71 different sizes of packages of potato chips available in the retail market under three and a half pounds.

A California grocery wholesale order book shows that in 1961 there were 5 different sizes of salad oil available in their warehouse—4 standard sizes—pint, quart,  $\frac{1}{2}$  gallon, and gallon; one non-standard size—24 ounce. By 1966 the number of sizes had more than doubled. In addition to the 4 standard sizes, the 1966 order book also has 12-ounce, 14-ounce, 24-ounce, 36-ounce, 38-ounce, 48-ounce, and 96-ounce sizes.

Now I can understand why it is necessary to have a considerable variety of sizes of an item like cake mixes, where each recipe has a slightly different mixture of ingredients. But how can the food industry defend 71 sizes of potato chip packages or 11 sizes of salad oil bottles? These two examples could be multiplied over and over again in instant coffees, in detergents, in cereals, in cookies, in jams and jellies, in peanut butter, and on and on.

Do you know how the industry got to 71 sizes of potato chips, and 11 or more sizes of salad oil? As General Manager of a Cooperative supermarket in Chicago, before I became Executive Director of Consumers Union, I saw the same pattern of action over and over again. Take salad oil as an example. One manufacturer comes out with a hungry pint—14 ounces instead of 16 ounces, to gain a competitive advantage. By clever design he makes the 14-ounce bottle look as large as the former 16-ounce bottle—sometimes it even looks larger. Because it is two ounces smaller, he can either sell it for less than the price of the 16-ounce size sold by his competitor, or he can use his savings for extra promotion or advertising on this "new" item. Whichever way he uses the money saved, he has achieved a competitive advantage. But his competitors or not going to let him hold this advantage. One by one they also come out with a 14-ounce size, or go him one better and bring out a 12-ounce bottle. If a manufacturer has a very clever designer, he can make this 12-ounce bottle look larger than even the 16-ounce size.

That is what happens, and that is how we now have 11 or more different sizes of salad oil and 71 different sizes of potato chips. The industry says, "Let us regulate ourselves." Gentlemen, they just cannot do it. Someone is always going to step out of line to gain a competitive advantage, and then the race for competitive advantage, resulting in a proliferation of sizes and shapes starts all over again. The government will have to establish standard sizes for the multiplicity of products where such standard sizes makes good sense, in order to bring order out of chaos.

The grocery industry itself will benefit by such government action. The industry is faced with a space problem of enormous proportions on the shelves of supermarkets. In 1945 there were approximately 1,500 labels on the average grocer's shelves. Today it is estimated that the average supermarket carries 8,000 different items. It is predicted by some in the industry that there will be 12,000 to 15,000 items in the supermarkets of 1975. Without doubt the ingenuity of our manufacturers will bring forth thousands of new items in the years ahead. To save them from themselves the government needs to take action to standardize the sizes and shapes of as many items as possible and thus make space available for the many new items that are sure to come.

Of course from the standpoint of the housewife, standard sizes would greatly simplify shopping by making price comparisons much easier.

There has been nothing in the 30-year history of the Consumers Union that has brought us more letters than the subject of packaging. We have received thousands of letters, frequently with labels enclosed, detailing the writer's experience with deceptive packages. Here is one we received recently. Exhibit A is two packages of Wheat Chexs, in this case both the same size. The old package had a net weight of twelve ounces. The new package has a net weight of nine and one-half ounces. Both boxes are equally full. The manufacturer has accomplished this by making the individual pieces of cereal less dense, with more air in it. Air is not the most expensive item in our world, you know. The result of this decrease in weight is a whopping price increase of nearly 25%. I ask you if the average consumer would know that in this instance he was paying 25% more for his breakfast cereal?

Diet-Rite Cola was selling six 16-ounce bottles for 65¢ plus deposit. Suddenly they changed their packaging and came out with a new carton of 8 bottles for 67¢, with a big sign on each carton saying, "Two bottles free." What they did not advertise was the fact that in changing from a 6-pack to an 8-pack they had reduced the sizes of the bottles from 16 oz. to 10 oz. The 10-oz. bottles are so designed that unless you have the two bottles side by side, it would be very

difficult for you to realize that there had been this substantial change in the size of the bottle. The result of this change was that with the six bottles of 16-ounce Diet Rite Cola the consumer got 96 ounces for 65¢. With the eight 10-ounce bottles the consumer is getting only 80 ounces for 67¢, even though he is now getting "two bottles free."

Exhibit C was sent to Consumer Reports by a Nebraska subscriber. It shows the box-end of a package of Baggies purchased in January, 1966, with 150 bags for 34¢. By March the box still had 150 bags for 36¢, but it also had this additional information: "50 Extra Bags Free When You Buy This Box At Regular 100-Bag Price."

Exhibit D is explained by the following letter to Consumer Reports from a New York subscriber: "On two occasions, I have bought Betty Crocker Mashed Potato Buds under the impression that each box contained one pound and 5 ounces of the product. Closer scrutiny revealed, however, that the contents of each was only one pound and half an ounce."

Exhibit E is explained by the following letter from a California housewife to Consumer Reports: "The only thing that's new is the price, 10¢ up. Last time I bought this, it was 50¢ for the same item. All of a sudden it is 60¢. It is an ordinary tube of Listerine tooth paste, nothing 'giant' about it. Do they really think, housewives are still falling for such nonsense? I feel insulted."

Many of the letters to Consumer Reports about misleading packaging have dealt with the problems related to "Cents-Off" promotions. Exhibit F illustrates a common situation, and is explained by a letter from a Connecticut subscriber: "Here's some more ammunition for your 'Truth-in-Packaging' war. These two boxes of Tide were purchased at the same store (First National Store) within a two-week period. Note one 'reflects a 20¢ saving' yet both sell for \$1.43. This was a last straw and I've now switched supermarkets."

Another letter about the "Cents-Off" problem, from a Pennsylvania housewife, is as follows: "Enclosed is a carbon copy of a letter I sent to the Carnation Company. I think it speaks for itself. This disgruntled consumer says, Bah! Humbug!"

CARNATION CO.  
Los Angeles, Calif.

GENTLEMEN: Once again the consumer is duped and victimized. Several weeks ago your company introduced its new product "Carnation Instant Breakfast" with intensive advertising, including "ten cents off" coupons sent to homes. I, unfortunately, was one of the unsuspecting consumers who fell for the ten cents off deal and purchased a box of Carnation Instant Breakfast—Eggnog. When I got home I noticed a tab on the lid with the price of 79 cents stamped on this gummed tab. Thus, the price for me was 69 cents. Being curious, I pulled back the tab and noted that the price underneath was 69 cents—the original price. Big deal! I saved nothing on the so-called "ten cents off" deal. The price was raised ten cents. In reality, I saved nothing. This is most discouraging and disgusting.

A letter from a New Hampshire housewife to Consumer Reports is self-explanatory:

"I bought a few weeks ago, a quart bottle of Kraft Vegetable Oil, marked on the label with a big '7 cents' off. The price stamped by the store was 52 cents.

"Last week, I needed vegetable oil again and scanned the shelves for the 'best buy.' There were no advertised specials, no cents off labeling, so I bought Kraft Oil again. I couldn't remember the price I was charged before, so when I got home, compared the nearly empty bottle I had bought weeks ago to the one I had just brought home. The bottle, *identical* in brand, content, and liquid weight, without the cents off label, was 53 cents. Only *one* penny more than the bottle marked in big red letters, seven cents off! (Same store.)

"How about that? Where do we scream? Where will it do the most good?"

Along with most cents-off claims goes a label warranty reading: "Price as marked is so-many cents off regular price." That guarantee is doubly deceptive. What is the regular price, would you say, of any of these products? That is no easy question, as the Federal Trade Commission learned sometime ago in its attempts to rid certain segments of the retail market of the deceptive practice known as the phony list price. And if regular price eludes definition, what then are branders promising with their cents-off declarations? But even if a regular price could be defined, the cents-off guarantee is still deceptive. Except where the price of a product has been dictated by a brander availing himself of the price-



fixing privileges granted by that retrogressive legislation misnamed "fair trade," attempts of manufacturers to control retail prices violate Federal law. The branders making these cents-off claims are well aware that they are promising what they cannot deliver. Consumer Reports has received many, many letters reporting prices charged that were inconsistent with cents-off label claims. The manufacturers sponsoring the offending labels, to whom these complaints were referred, have invariably answered that they are not responsible for the deception because they have no control over prices in retail stores.

There is no need to labor this point. Cents-off labels do not provide the meaningful price information they appear to. They are not price guides at all. They are promotional devices designed to make the buyer believe that he is being offered a bargain, and they are deceptive because bargains cannot be determined without price comparisons.

According to industry-sponsored surveys, consumers have said that they are favorably influenced toward a product with a cents-off label, and reports from the retail trade seem to confirm the effectiveness of cents-off claims in switching consumer choice. This evidence of favorable consumer response to cents-off labels does not, however, constitute justification for continuing the practice, as some industry spokesmen have appeared to believe. Such evidence, on the contrary, provides a compelling case for legislation to prohibit it. It is precisely the success of deceptive packaging practices that has created the need for this legislation. If we were all prowling computers there would be no problem. But since we are human, the problem posed is a serious one, serious not only for the shopper but for the nation.

The burden placed upon consumer sovereignty by the free enterprise system is a heavy one, growing heavier as products and markets reflect the mounting complexity of technology and the increasing power of sellers to manipulate demand. But the priceless ingredient of effective competition remains free and rational consumer choice. Any marketing practice that renders rational choice more difficult is a subversion of the American economy. When consumers say, "We can't compare prices," they are voicing no minor complaint. They are sounding an alarm. Diogenes Laertius once wrote: "The market is a place set apart where men may deceive each other." But Diogenes Laertius lived over 1,500 years ago in a different kind of economy. In 20th Century America the market is no longer a place apart. It is intimately woven into the fabric of our lives. We depend upon its functioning for that which distinguishes our competitive economic system from other economies. And it is the survival of the free market that is what this legislation is all about.

The packaging chaos on the market today is, of course, an unforeseen outcome of the battle-for-shelf-space that began just after World War II as self-serve supermarkets came to dominate food distribution. That was when the package became a salesman and the supermarket an advertising medium. In addition to the more than \$1 billion spent in conventional media, food manufacturers spend another 20% of that amount on advertising allowances paid out to retailers. And in this battling and bribing for shelf space, bad practice drove out the good. It was and remains a quicksand situation. No single packager could extricate himself from it with impunity. Yet one after another food manufacturer has rejected packaging legislation which provides the only means out of the deepening mire.

During the five years that packaging legislation has been before Congress, we have heard many statements from food industry sources about how the industry can regulate itself. Gentlemen, the industry has had five years to show us how well they can handle the job of establishing fair packaging practices under self-regulation. The exhibits I have shown you today are only a small sample of the bad practices going on in 1966, five years after the food industry started talking about how they could handle the problem through self-regulation. Need I say more? The American housewife needs a tough, mandatory fair packaging bill that will, in the words of President Johnson:

"1. Require that each package provide simple, direct, accurate, and visible information as to the nature and quantity of its contents, including ingredients where this is important.

"2. Keep off the shelves packages with deceptively shaped boxes, misleading pictures, confusing or meaningless adjectives, inappropriate size or quantity markings, and promotional gimmicks that promise nonexistent savings.

"3. Provide for the establishment of reasonable and appropriate weight standards to facilitate comparative shopping."

**Mr. MACDONALD.** Is Mrs. William H. Hasbrook, who is honorary president of the General Federation of Women's Clubs, here?

**Is Mr. Cawley,** executive director of the Label Manufacturers National Association, present?

**Mr. CAWLEY.** Yes, Mr. Chairman, I am present.

**Mr. MACDONALD.** You may proceed.

**STATEMENT OF FRANCIS R. CAWLEY, EXECUTIVE DIRECTOR,  
LABEL MANUFACTURERS NATIONAL ASSOCIATION, INC.**

**Mr. CAWLEY.** Mr. Chairman, I thank the committee for the opportunity of appearing. I would like also to say that I had occasion to go on the air about a week ago on this subject, and I paid tribute to the Chairman and this committee for its very careful and thorough consideration of this measure.

It bothers me somewhat that the other house took 4 years and you are expected to come out with a measure here in a few weeks. The problem is greater than that, and your searching inquiry into the proposal leads me to believe that it may cost you a lot of hard work and overtime, but you are doing it, and I appreciate that very much.

My name is Francis R. Cawley. I am executive director of the Label Manufacturers National Association, Inc.

Mr. Chairman, in deference to your wishes, I would like to read a portion of my statement and omit certain portions, because you will note there are several pages of quotes which I believe I can summarize quickly.

**Mr. MACDONALD.** Your full statement will be made a part of the record and you may proceed in any way you wish.

(Mr. Cawley's full statement follows:)

**STATEMENT OF FRANCIS R. CAWLEY, EXECUTIVE DIRECTOR, LABEL MANUFACTURERS NATIONAL ASSOCIATION, INC.**

Mr. Chairman, and members of the Committee. My name is Francis R. Cawley. I am Executive Director of the Label Manufacturers National Association, Inc., an organization which was founded in 1916 and is made up of Label Manufacturers who produce a substantial portion of the Nation's labels and wrappers.

Our Association was formed to promote the general welfare of the Label Manufacturing Industry, and to serve the public by research, collection and dissemination of pertinent, lawful information; to collect such industry statistics, and other information, as may be requested by government agencies, and to cooperate with officials of such agencies in any program considered essential to national defense or otherwise. Our Members assist in the design, and manufacture of wrappers, labels, packages and containers, in order to serve our customers—the canners, the packagers, the bottlers, and distributors—in the proper identification and lawful sale of their products.

The Association is proud of its role in the mass distribution of American food products—still the greatest bargain in the world. It was in the forefront of those who advocated Federal laws and regulations to keep the gyp artists out of the market place. Our organization was formed at a time when Label Manufacturers were seeking the passage of a national food and drug law. Our record indicates that the Association and its Members supported the enactment of the Food, Drug, and Cosmetic Act of 1938, the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, and the Hazardous Substances Labeling Act of 1960. It is an Associate Member of the Standard Weights and Measures Conference and has supported efforts to extend compatible laws and regulations at the State level. Herein lies a mechanism for compliance that, as yet, has not been fully tested. More on this point later.

We not only sought and supported such enactments, but also worked in a very systematic manner to obtain universal compliance. The Association has maintained a constant flow of information to its Members on rules and regulations that have been promulgated in the administration of these several enactments. As an integral part of this education process, our Washington Office is in daily touch with Federal and State Agencies, Foreign Representatives, and attends as many government-industry conferences, such as those on Census requirements, weights and measures, and food and drug laws, as time will permit.

Mr. Chairman, I address my remarks this morning to H.R. 15440 and S. 985. In light of our record, it may seem strange that our Association is opposed to the enactment of these Measures, but as I proceed I would hope that our reasons will appear as cogent and compelling to you, as they do to us. I am frequently confronted with the following question, "When a Bill such as this could only result in a greater volume of business for label manufacturers, why do they oppose it?" At times it becomes more searching when reference is made to the rising printing technical revolution, mounting costs and the fierce competition that has depressed the return on our investments since the end of World War II.

Our answer is simply that we share with our customers, a deep sense of responsibility to identify and promote American products in accordance with law, and shredding our existing pattern of law and regulations will do more harm than good. This rises from a strong belief that existing law is not only adequate for current complaints, such as they are; but also, under a program of intensified compliance at the national and state levels, we can protect and serve the consumer well, even with the influx of thousands of new products in the next decade. Why further complicate and confuse a system, when we have worked so hard to establish a frame of reference within which we can operate? Have our efforts to catch up been in vain?

Just a word on present day complexities. After 50 years of operating under food and drug laws, we still find it necessary to provide our Members with more than 40,000 copies of new, or revised Federal and State regulations each year. After 20 years of operating under the Insecticide, Fungicide and Rodenticide Act, the U.S. Department of Agriculture is currently processing and registering 200 products each week. I believe the volume of regulations under existing laws will increase, as you may see from the recently issued orders on antibiotic drugs and dietary foods. (Copies of pertinent LINA LABELGRAMS on these orders have been supplied to the Committee.) It has been an enormous task just keeping current with regulations as they have had affected 6,000 new products added in the market place these past few years. We are told another 10,000 are in the offing. There is slowly emerging in this Nation, a program of massive compliance with Federal and State Laws, which could be interrupted with resultant havoc for both the consumer and the producer in the market place, and all the good intentions of respectable businessmen for their customers' welfare lost in a jungle of bureaucratic fiat and red tape.

I would be remiss indeed, if I did not not carefully explain to you that under our Industry's Trade Customs, it is the processor that bears the full responsibility for declarations on the label. Big business processors have competent legal advice to insure compliance. The small business processor, however, must rely extensively on our Members and government agencies for guidance on legal requirements affecting their products. I dread the prospect of the tons of additional regulations that would flow from the administration of H.R. 15440, or a similar law. We prefer to encourage voluntary compliance under existing laws and regulations.

Now, if I may present our specific reasons for opposing H.R. 15440. They are as follows:

1. There is ample evidence that where government-industry cooperation on labeling has been intensified, it has succeeded so well that additional law is unnecessary.
2. Effective compliance with existing Food and Drug Laws and Regulations has not been vigorously pursued, other than in the fields of health and general consumer protection.
3. The enactment of H.R. 15440 will neither insure additional compliance, nor obtain consumer savings.

Government-industry cooperation has succeeded so well on certain products that the Senate has seen fit to exclude them from the provisions of S. 985. Such are meat and meat products, poultry and poultry products, tobacco and tobacco

products, insecticides, fungicides, rodenticides, virus-serums, certain drug shipments, alcoholic beverages and commodities subject to the Federal Seed Act. In a letter dated April 27, 1965, addressed to the Senate Commerce Committee, the Secretary of Agriculture, Orville L. Freeman, explained how the Department through regulation and industry cooperation has been able to enforce existing prohibitions against deceptive meat and poultry labels and furthermore, regulate the "cents off" labeling, even though there are no mandatory prohibitions against this latter practice in existing statutes. He also stated, "Lack of authority under existing Federal laws to require standardization of weights or measures for retail packages of meat and poultry products has not been a troublesome or contentious matter." Since it is not unusual to find as many as eighty-five different kinds and cuts of meats and poultry in a typical supermarket, this is an achievement of no small magnitude.

If the typical American family is like mine, you will find most consumers making their meat and poultry selections in the local newspapers and not at the commodity counter itself. Even here, fractional weights and prices per pound still throw me for a loss. If one package of meat is heavier than another one of like content and the price is higher, I conclude it is properly priced. I believe this is true of many other products that are advertised in local papers. This is the reason a skillful shopper will visit several different supermarkets on a single shopping excursion in order to take full advantage of the bargains.

Of course, alcoholic beverages have been exempted because of their standard sizes. This also possibly applies to cans and milk and ice cream cartons, because of the present voluntary standards that have been already obtained with government sanction. Yet, because of varying quality, weights and the interplay of competitive factors, price comparisons will remain difficult. It is not intended that we establish price controls in the Measures.

In the case of exempting the products under the Federal Insecticide, Fungicide, and Rodenticide Act, I am advised by the Department of Agriculture that industry cooperation in the matter of registrations of economic poisons has been of the highest order. Labels for these products are approved, registered and placed in a file for subsequent review. As I have testified, their current volume is 200 labels per week.

Finally, under his first objection, I submit that government and industry have collaborated very well on a Model State Law and Model Regulations. This is based on the Federal Law and squarely aimed at the frequent complaints raised by proponents of new packaging legislation. These regulations were drafted cooperatively by State and Federal officials and by representatives from 118 companies and 56 trade associations. While all States have laws dealing with labeling and packaging at an annual cost of \$34 million per year, only 29 to date have adopted the Model State Law and 10 have issued Model Regulations. Herein lies the solution to the lack of compliance with existing Federal laws that Federal agencies have been unable to achieve. Once all the States have adopted model laws and regulations, enforcement can start at the local level and abuses halted before they become too widespread.

To clinch this argument against the need for a new Law, I respectfully call the Committee's attention to a Press Release dated July 7, 1966, issued by Paul Rand Dixon, Chairman of the Federal Trade Commission, in which he calls upon the States to enact laws to prevent consumer deception and unfair competitive practices, etc. He urged them to adopt legislation similar to the Commission's own authority to prevent "unfair methods of competition and unfair or deceptive acts or practices in commerce." This would leave the Commission free to deal more quickly and effectively with problems of regional or national significance. He stated that by adopting such legislation the States could draw upon the Commission's 50 years of experience and the 800-plus court decisions interpreting the Federal Trade Commission Act which declares such practices to be unlawful. Gentlemen, I submit that a similar program is already under way for the Food and Drug Administration, which makes the enactment of H.R. 15440 or S. 985 wholly unnecessary. This kind of massive compliance effort would completely eliminate market place abuses with a minimum of change in existing laws. The deliberations on packaging and labeling in recent years have not been without their good effects.

Our second objection deals with the lack of vigorous enforcement of existing Federal laws. There is positive testimony on this failure by Chairman Dixon and Commissioner Larrick as far back as 1962. It seems not to be a question of authority, but rather one of manpower. I have wondered for some time now

if many of the complaints would have long ago disappeared if Federal compliance investigators had used a few slide rules in making their appointed rounds. Apparently, full attention has not been given to existing power and the so-called economic compliance activity.

Chairman Dixon testified early in the development of the Senate bill, as follows:

"There can be no doubt that the Commission's general powers under existing law would authorize it to issue such orders when false or misleading packaging or labeling result in consumer deception. As the Supreme Court held in *United States v. Morton Salt Company*, 338 U.S. 632, 647-648 (1950):

"The fact that powers long have been unexercised well may call for close scrutiny as to whether they exist; but if granted, they are not lost by being allowed to lie dormant, any more than nonexistent powers can be prescribed by an unchallenged exercise. We know that unquestioned powers are sometimes unexercised from lack of funds, motives or expediency, or the competition of more immediately important concerns."

Commissioner Larrick, also, testified on this matter in 1962:

"Thus, in our enforcement activities, we have applied the funds appropriated to us so that all of the time and funds necessary to deal with matters involving the public health are given first priority. Next come those involving filth and insanitation. What little time was left was to be devoted to the so-called economic class of violations. It is no secret that for a number of years the appropriations available to the Food and Drug Administration, coupled with the problems in the first two categories I mentioned, have left very little time to be devoted to this third, or economic category.

"I would like to point out in that connection that in 1955 when we had 825 people to do the total job of the Food and Drug Administration, it was absolutely essential that we work on health and the like and we had virtually no opportunity to do economic violation work, but succeeding Congresses have been increasingly kind to us, and the budget for 1963, if it goes through as it passed the House, will provide a total of 3,023 people as against 825. And if that trend continues we can give increasing attention to food standards and to other abuses that are hurtful to the consumer and hurtful to honest business."

The House Appropriations Committee approved approximately \$7 million in increases for fiscal year, 1965, for Food and Drug Administration, stating in part:

"Ever since the Food and Drug Act was passed, the law has provided for a level of protection of the American people that the Food and Drug Administration has not had the facilities to achieve. This budget provides for a big forward step in this direction."

A review of the Food and Drug Administration's Appropriation Hearings for 1966 sheds additional light on this subject. For the benefit of this Committee, I should like to quote from the record:

"Mr. FOGARTY. Your appropriation for 1965 adjusted for transfers is \$40,368,000 and the request for 1966 is \$50,352,000, an increase of \$9,984,000 and 406 positions. Now, some of your activities aren't treated too badly but your most basic activity—regulatory compliance—isn't budgeted for a single additional position. How do you explain that? Is this your idea or someone else's?

"Mr. LARRICK. I suggested to the Department that there should be additions in this area.

"Mr. FOGARTY. How much did you ask the Department for and how much did the Department allow, and how much did the Bureau of the Budget?

"Mr. LARRICK. As an overall national policy matter, it was decided that this year we would not be authorized to ask for additional people in the field.

Mr. Kelly, do you want to speak on that?

"Mr. KELLY. I think that the conclusion of the entire executive branch has been that there should be an increase in consumer protection, as evidenced by this budget, but that this increase should be approached with a preponderant emphasis on the application of new scientific technology in the consumer field rather than on regulatory compliance activities which have received the major emphasis in the past. Therefore, a decision was reached to constrain this and allow all of the increase to move into the other area.

"Mr. FOGARTY. What did you ask in this area?

"Mr. SPARER. We asked the Department for 439 positions, and the Department cut this back.

"Mr. FOGARTY. In the regulatory compliance, how much more did you ask for there?

"Mr. SPARER. We asked, initially for 439 positions.

"Mr. FOGARTY. That is the total.

"Mr. LARRICK. How much is the increase?

"Mr. FOGARTY. Yes.

"Mr. SPARER. The Department brought that down to 135. It went to the Bureau of the Budget, and they cut it down to zero. The Department approved 135 positions. The Bureau of the Budget cut out the staff positions and allowed about \$1.7 million in nonstaff resources for this activity.

"Mr. FOGARTY. You really got hit on that one, didn't you?

"Mr. LARRICK. We did."

Further on in the record, we have the additional colloquy:

"Mr. MICHEL. Well, we have heard so much in recent weeks and months about packaging and labeling and proposed new legislation required for this and that—what would your reply be if I were to say that maybe there hasn't been enough emphasis on actual enforcement or sufficient enforcement in this area and if there was better enforcement we wouldn't need any new legislation?

"Mr. LARRICK. Now, I won't go so far as to say we didn't need any new legislation, but I would freely concede that there hasn't been sufficient enforcement."

Mr. Chairman, if the Food and Drug Administration requires 439 positions for regulatory compliance at an estimated average salary of \$5,500 (1966 Hearings record, page 187), one can logically conclude that the Agency is short about \$2½ million for this kind of activity, just in salaries alone. After approximately 30 years of experience under the Food, Drug, and Cosmetic Act of 1938, if we still find a shortage in regulatory compliance personnel of 439 man years, one might reasonably ask what additional costs would be involved under H.R. 15440, or S. 985, to bring compliance with this law into full force and effect. One wonders if there are complaints! If so, how long will it take them to catch up? If the emphasis is still on consumer protection related to the public health, this supports our third contention that we are seeking to affect compliance by enacting new legislation, when we haven't given the Executive Branch of the Federal Government a fair opportunity to prove that existing laws are adequate, as they have previously testified.

Their appropriations for salaries and expenses have been increased from \$29 million in 1963 to \$53 million in 1966. Their estimate for 1967 is over \$63 million. This would indicate the Food and Drug Administration is catching up with their operating requirements as appropriations will have more than doubled in this short period of time. It argues that it is now approaching an era when effective compliance under existing law might be obtained, making new laws unnecessary. We believe this is the solution for the consumer at this time.

I have already alluded the first part of our third objection, namely, that we do not necessarily achieve compliance with the enactment of new laws. Many years of experience in the Executive Branch of the Federal Government prompts me to say this. Starting with the National Recovery Administration through the administration of war-time controls, we found that a strong enforcement activity was indispensable to the effective administration of regulations, which in the thirties were developed on a voluntary basis. One wonders why Food and Drug has reduced their appropriations for economic compliance by \$1,200,000 in recent years.

If lack of compliance has been a fundamental weakness in the present Food, Drug, and Cosmetic Law, we do not believe the imposition of new laws will improve this defect. Honest businessmen will make every effort to comply with government law and regulations, but, as we all know, they throw up their hands in despair when competitors get away with unfair competitive advantages which appear to be unlawful.

It is evident that Section 5 of this Measure will cause all kinds of confusion. How about voluntary standards already established? Do new standards have to be revised when new products are prepared for the market? Does the refusal to participate in a voluntary standard procedure result in arbitrary regulations? Are standards to be established on a product or a commodity basis? How will voluntary standards affect state operations? Would not such a procedure stall the introduction of new products on the market? Can industry continue to meet consumer demands for convenience and improved quality? These are but a few questions that are already beginning to be of concern to American processors, plus, of course, the question concerning added costs.

Manufacturers have testified that drastic changes in existing regulations would add millions to present costs. National Biscuit Co., \$4 million; General Mills,

\$9 million; and Proctor & Gamble, \$10 million—are but a few of the estimates provided. The outstanding estimate of several hundred million dollars for new buildings and equipment, given by the Grocery Manufacturers of America, is the most startling.

Government costs will also be increased. The Department of Commerce has placed an estimate of \$20,000 for each voluntary standard adopted. This, of course, does not include legal fees for business representation. Increased enforcement activities on the part of the Federal and State Government should be added as they will find their way into tax requirements.

Under these circumstances it would hardly seem likely that food prices could be reduced. It boils down to a practical question—is the added cost of protection worth it?

As I testified earlier, American food is the world's best bargain. It has been estimated that 70% of sales today are products that were not on the market just ten years ago. Yet, we know that in 1965 American people spent 18.2% of their disposable income for food—a reduction of 8% since the 1947-49 period—and that by 1970 over 200 million Americans will be spending 17% or less for even a better diet. As a matter of fact, an hour of work today will buy twice as much food as it would 30 years ago. Compare this with England where food takes 27% of total family expenditures; in France, where the proportion is 30%; and in Italy where 43% of family expenditures are required. Finally, in Russia, food accounts for approximately one-half of the total family spending.

I attribute our successes to the productive genius of both agriculture and industry, that has achieved a volume output unequalled in the world, and to our promotion and distribution efforts that have kept our products moving at low cost. This is the miracle of free enterprise as we know it, and would not substitute it for any other system in the world. With thousands of new products responsive to consumer demands, to be added in the next decade, can we afford to slow down the system? The Federal Reserve Bank of Dallas, Texas, recently completed a study of the farm-retail spread, which stated, "The conveniently packaged, highly-standardized, and almost completely prepared commodity on display is the end product of a fast-changing food industry that sells much more than food with each unit." And yet, our percent of disposable income spent on food is decreasing, as consumer demands mount.

Gentlemen, I have attempted to state as briefly as possible our objections to H.R. 15440 and S. 985. We sincerely believe it is just as unnecessary today, as back in 1962 when it was first introduced for practically the same reasons.

In closing, I wish to pay tribute to the various Federal Agencies—the Department of Commerce, the Department of Agriculture, the Food and Drug Administration, the Federal Trade Commission, and finally, the U.S. Treasury, where it has been our Industry's good fortune to find counsel and service of the highest quality. It has made the contributions to our programs of voluntary compliance far more effective.

We have a good system now, with even a greater potential for service. Let's leave it that way.

Thank you.

Mr. CAWLEY. Mr. Chairman, our association was formed in 1916 and is 50 years old this year. It is made up of label manufacturers who produce a substantial portion of the Nation's labels and wrappers.

We are proud of our role in the mass distribution of American food products which we still think is the greatest bargain in the world. Our association has been in the forefront of those who advocated Federal laws and regulations to keep the "gyp artists" out of the marketplace.

Our organization was formed at a time when label manufacturers were seeking the passage of a national pure food law, then a food and drug law which later on became the Food, Drug, and Cosmetic Act of 1938.

Our association supported the enactment of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 and the Hazardous Substances Labeling Act of 1960. We are an Associate Member of the Standard

Weights and Measures Conference and have supported efforts to extend compatible laws and regulations at the State level. Herein lies a mechanism for compliance that, as yet, has not been fully tested. More on this point later.

We not only sought and supported such enactments, but also worked in a very systematic manner to obtain universal compliance. The association has maintained a constant flow of information to its members on rules and regulations that have been promulgated in the administration of these several enactments. As an integral part of this educational process, our Washington office is in daily touch with Federal and State agencies, foreign representatives, and attends as many Government-industry conferences, such as those on census requirements, weights and measures, and food and drug laws, as time will permit.

Mr. Chairman, I address my remarks this morning to H.R. 15440 and S. 985. We have opposed it in the Senate; we oppose it here. Our reason for that is that we share with our customers a deep sense of responsibility to identify and promote American products in accordance with law, and shredding our existing pattern of law and regulations will do more harm than good.

For 50 years we have worked for laws and regulations and a pattern of regulations under which we can operate. We believe that there is going to be an awful lot of time wasted, if all of a sudden this is set aside and we have a whole myriad of new administrative fiat thrown into this machine, which is going to confuse, delay, and eventually prove more costly to the consumer.

Now I will get into that in more detail as I proceed here.

We just don't feel the present system should be complicated any more than it is, and believe me it is complicated enough. I want to speak briefly on the complexities of the present system.

After 50 years of operating under food and drug laws, we still find it necessary to provide our members with more than 40,000 copies of new, or revised, Federal and State regulations each year. I have provided you with sample copies.

After 20 years of operating under the Insecticide, Fungicide, and Rodenticide Act, the U.S. Department of Agriculture is currently processing and registering 200 products each week. I believe the volume of regulations under existing laws will increase, as you may see from those I just handed you.

It has been an enormous task just keeping current with regulations as they have affected the 6,000 new products added in the marketplace these past few years. We are told another 10,000 products are in the offing. There is slowly emerging in this Nation a program of massive compliance with Federal and State laws, which could be interrupted with resultant havoc for both the consumer and the producer in the marketplace, and all the good intentions of respectable businessmen for their customers' welfare lost in a jungle of bureaucratic fiat and redtape.

Now I would be remiss indeed if I did not carefully explain to you that under our industry's trade customs, it is the processor that bears the full responsibility for declarations on the label. Big business processors have competent legal advice to insure compliance. The



small business processor, however, must rely extensively on our members and Government agencies for guidance on legal requirements affecting their products. I dread the prospect of the tons of additional regulations that would flow from the administration of H.R. 15440, or a similar law. We prefer to encourage voluntary compliance under existing laws and regulations.

Now if I may summarize our three principal reasons for opposing this bill.

First, there is ample evidence where Government-industry cooperation on labeling has been intensified, and in some instances even without law, it has succeeded so well that additional law is not necessary. You have excluded them from the bill pending before this committee.

Secondly, effective compliance with existing food and drug laws and regulations has not been vigorously pursued, other than in the fields of health and general consumer protection.

Third, the enactment of H.R. 15440 will neither insure additional compliance, nor obtain consumer savings.

Now let's get into the first point where Government-industry cooperation has succeeded to a point where you have seen fit now to exclude them from the bill pending before this committee. Such are meat and meat products, poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, virus-serums, certain drug shipments, alcoholic beverages and commodities subject to the Federal Seed Act.

Respecting meat and meat products, in a letter dated April 17, 1965, addressed to the Senate Commerce Committee, the Secretary of Agriculture explained how the Department through regulation and industry cooperation has been able to enforce existing prohibitions against deceptive meat and poultry labels and furthermore, regulate the "cents-off" labeling even though there are no mandatory prohibitions against this latter practice in existing statutes.

He also stated:

Lack of authority under existing Federal laws to require standardization of weights and measures for retail packages of meat and poultry products has not been a troublesome or contentious matter.

Since it is not unusual to find as many as 85 different kinds and cuts of meats and poultry in a typical supermarket, this is an achievement of no small magnitude.

I will omit my own family practices except to say that when I go to a meat counter and look at a standard commodity, let us say ground beef, where you have the cents per pound and the number of ounces and the net price, et cetera, I still am confused with price.

Gentlemen, if there are different packages of the same product, I pick them up. If the higher priced one feels a little heavier, I buy it and conclude I am getting a fair deal.

I think I have an average-education background. I doubt very much if anybody stops and makes a fast arithmetical decision at the meat counter. I suggest they prepare as my family does. The night before, we get the newspapers out, and study the bargains and determine the stores where we are going to shop, and we shop for bargains.

When Representative May told this committee it was possible to achieve about a 16-percent saving in your food bill through careful

shopping, I agree with her. Also, I have gone to the supermarket several times during these hearings just to test out this sort of thing, and I find that there are bargains and good buys, and I have seen no store with 71 different sacks of potato chips in them.

In the Giant supermarket the other night I counted eight different sizes. Now there may be 71 available, but in my store there were 8 different sizes and all carefully priced. There was no problem as far as I was concerned.

Alcoholic beverages have been exempted because of their standard sizes. I doubt very much, though, that you get standard weights because I know the content will vary in weight even by the pint, or fifth, or what have you. Price, of course, is set by the retailer.

I went in a liquor store the other day and wandered around. My doctor won't let me drink any more, but I did go in and check all the bargain barrels, and he had them two for \$3.69, three for \$5, et cetera—obviously, prices he set himself.

In the case of the exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act, I am personally advised by the Department of Agriculture that industry cooperation with that Department on these types of products has been of the highest order. They call in industry, sit down with them, work on the regulations and the procedures, and apparently no problems have arisen, except occasionally we see the elimination of an insecticide or fungicide from the marketplace because of certain inherent dangers. These are economic poisons that are involved.

Finally, under this first objection, I submit that Government and industry have collaborated very well on a model State law and model regulations. This is based on the Federal law and squarely aimed at the frequent complaints raised by proponents of new packaging legislation.

These regulations were drafted cooperatively by State and Federal officials and by representatives from 118 companies and 56 trade associations. While all States have laws dealing with labeling and packaging at an annual cost of \$34 million per year, some 29 to date have adopted the model State law and 10 have issued model regulations.

Herein lies the solution to alleged reasons prompting this legislation. Once all the States have adopted model laws and regulations, enforcement can start at the local level and abuses halted before they become too widespread.

To cinch this argument against the need for a new law, I respectfully call the committee's attention to a press release dated July 7, 1966, issued by Paul Rand Dixon, Chairman of the Federal Trade Commission, in which he calls upon the States to enact laws to prevent consumer deception and unfair competitive practices. He urged them to adopt legislation similar to the Commission's own authority to prevent "unfair methods of competition and unfair or deceptive acts or practices in commerce." This would leave the Commission free to deal more quickly and effectively with problems of regional or national significance. He stated that by adopting such legislation the States could draw upon the Commission's 50 years of experience and the 800-plus court decisions interpreting the Federal Trade Commission Act which declares such practices to be unlawful.

We have heard a lot about deceit and misleading information and that sort of thing. I am certain that present-day statutes cover all that.

Now, gentlemen, I submit that a similar program is already underway for the Food and Drug Administration, which makes the enactment of H.R. 15440 or S. 985 wholly unnecessary. This kind of massive-compliance effort could completely eliminate marketplace abuses with a minimum of change in existing laws. The deliberations on packaging and labeling in recent years have not been without their good effects.

There is a great sensitivity to this business and my impression in attending these States weights and measures conferences is that they are going to do a great deal at the local level.

Let's see if we can keep it standardized and uniform.

As the Food and Drug Administration testified before the Congress, they concentrated in fields of consumer protection and consumer health with little or no time for economic compliance. They can work on the broad level objectives and let the enforcement of certain of these deceptive practices start at the State level.

Now that leads right into my second point—the lack of vigorous enforcement of existing laws. I have represented the executive branch of the Federal Government and industry before the several committees of the Congress for 30 years and I speak from my Government experience where I served as Director of Budget Management for six Federal agencies including one major department of the Federal Government.

I have reviewed the testimony of the Food and Drug Administration on the matter of appropriations for economic and regulatory compliance. It is all set forth here in copies of my testimony. The gist of it is this: They are short 439 positions for regulatory compliance. Now what happened? The Food and Drug Administration asked the Health, Education, and Welfare Department for 439 positions. In the departmental review they cut that to 135 positions, and it went to the Bureau of the Budget where the 135 were completely eliminated. That is a matter of record before the Appropriations Committee.

Now I submit to this committee, and this is based on at least 15 years of experience of processing budgets, the men who review these budgets in our executive branch are very sharp-minded, they are very capable, and I say to this group that some place along the line the FDA didn't make much of a case for intensified compliance activities in the economic or regulatory field.

I know there have been allegations of many consumer complaints, but one begins to wonder actually if there have been complaints. Just to double check that and satisfy my own mind, I reviewed a half dozen of the Food and Drug Administration reports on enforcement activities. I combed through these for the last 6 or 7 months here and, gentlemen, on labeling as such, packaging as such, I could find very little evidence in here of the Food and Drug Administration having really gone after this. There is little evidence in these that would support an appropriation calling for 439 additional compliance investigators, or even 135. The reaction in the appropriations committees has been, at least on the part of certain members, "Well, if you had

more people for compliance activities, would you need any additional legislation?" The answer has been, "We would not say we do not need new legislation, but we will admit there hasn't been sufficient enforcement."

So I maintain that there has not been the vigorous enforcement of existing law. Perhaps the Government people, as they made their appointed rounds, should have taken a slide rule with them. How easy to walk into a supermarket and spot the violations as they exist and then proceed under their existing authority to remove commodities from the shelves, or to invoke whatever other penalties are available.

Now just one last point on compliance. I know that in any administration there are many priorities on the use of money and the fixing of the greater or lesser importance of programs, but right in the middle of all this controversy they cut their existing program by \$1,200,000. I am talking about the economic compliance which gets into the checking of sizes, weights, labels, et cetera, in the marketplace. That has been set forth in the 1966 hearings record, page 229. It is very obvious that there has been a reduction. So I submit, gentlemen, first of all perhaps it has not been necessary vigorously to pursue existing laws, because there has not been the volume of complaints that we have been hearing so much about.

I have represented agencies that had compliance activities and when we presented our budget in connection with them we presented the workload, we presented the cases and the resolution of them and you can find that in many department hearings.

The Post Office, for example, lists many of their violations and how they dealt with them effectively.

If lack of compliance has been a fundamental weakness in the present food, drug, and cosmetic law we do not believe the imposition of new laws will improve this defect. Honest businessmen will make every effort to comply with Government law and regulations, but as we all know, they throw up their hands in despair when competitors get away with unfair competitive advantages which appear to be unlawful.

It is quite evident that section 5 of this measure you are considering will cause all kinds of confusion. How about voluntary standards already established? Are they excluded? Do these standards have to be revised when new products are prepared for the market? Does the refusal to participate in a voluntary standard procedure result in arbitrary regulations? Are standards to be established on a product or a commodity basis?

How will voluntary standards affect State operations?

That is where I come back to my point of shredding existing regulations. If the State and Federal Government have common laws for enforcement of labeling and packaging regulations, and then you have variations because of these "voluntary"—and I put quotes around voluntary—standards because they are going to become mandatory, what impact does that have on the State regulation when the Federal law preempts the State law as it does under this bill?

There are many problems here and I am convinced their resolution will increase costs considerably.

Manufacturers have testified that drastic changes in existing regulations would add millions to present costs. National Biscuit Co., \$4 million; General Mills, \$9 million; and Proctor & Gamble, \$10 million, are but a few of the estimates provided. The grocery manufacturing people tell me that it will involve hundreds of millions before they get through, if this law is enacted.

The Government costs will also be increased. The Department of Commerce placed a \$20,000 estimate on each voluntary standard to be developed. That is taxpayers' money. It amounts to \$100 million if you have 5,000 new standards to be adopted. Think, then, of the businessmen's legal fees. You must know that peanut butter standards required 4 or 5 years, and tuna standards took several years to establish. It is going to make awfully good business for the lawyers.

Under these circumstances it would hardly seem likely that food prices could be reduced.

It boils down to a practical question—is the added cost of protection worth it? Is it at all necessary?

Now American food is the best bargain in the world. It is estimated that 70 percent of the sales today are products that were not on the market just 10 years ago, yet we know that in 1965 the American people spent 18.2 percent of their disposable income for food, a reduction of 8 percent since the 1947-49 period. By 1970 over 200 million Americans will be spending 17 percent or less for a better diet. As a matter of fact, an hour of work today will buy twice as much food as it would 30 years ago.

Compare this with England where food takes 27 percent of total family expenditure, in France where the proportion is 30 percent, in Italy where 43 percent of family expenditures are required, and finally, in Russia food accounts for approximately one-half of the total spending by a family.

I attribute our success to the productive genius of both agriculture and industry.

Mr. MACDONALD. Excuse me, sir. Where did we get those Russian figures?

Mr. CAWLEY. These came from a speech given by an official of the U.S. Department of Agriculture, which I will be glad to supply to the committee. I believe it was Secretary Freeman himself.

Mr. MACDONALD. Thank you.

Mr. CAWLEY. Shall I provide that for the committee? Because I would not have used these if there is not a proper source for them.

Mr. MACDONALD. Yes.

(The information requested follows:)

LABEL MANUFACTURERS NATIONAL ASSOCIATION, INC.,  
Washington, D.C., August 26, 1966.

HON. TORBERT H. MACDONALD,  
House of Representatives,  
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN MACDONALD: In further response to your inquiries raised in the hearings before the House Interstate and Foreign Commerce Committee yesterday, I am providing you with certain additional data.

With respect to illegible print on a label, I wish to quote from the current Regulations under the Federal Food, Drug, and Cosmetic Act:

"Misbranded Food. Sec. 408 (343). A food shall be deemed to be misbranded—  
(a) If its labeling is false or misleading in any particular.

\* \* \* \* \*

(f) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(Regulations) Sec. 1.9 Food: labeling: prominence of required statements.

(a) A word, statement, or other information required by or under authority of the act to appear on the label may lack that prominence and conspicuousness required by section 403(f) of the act by reason (among other reasons) of:

(1) The failure of such word, statement, or information to appear on the part of panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(5) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or

(6) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter."

I believe you will agree that this is ample authority to prohibit the use of fine, illegible print. This is an example of existing law and regulation which covers all forms of malpractices relating to the identification of food and food products.

You were also interested in my authority for statements having to do with the percent of disposable income spent on food in the United States and other countries. On May 8, 1966, in an NBC interview, Secretary of Agriculture, Orville L. Freeman stated: "An hour of work today will buy twice as much food as it would 30 years ago."

On June 9, 1966, in an address at the Robert Treat Hotel, Newark, New Jersey, Secretary Freeman also stated: "In 1947-49, we spent 26 percent of our take-home pay for food. In 1960 we spent 21 percent. Today we spend only 18.3 percent! \* \* \* In England, food takes 27 percent of total family expenditures. In France, 30 percent. In Italy, 43 percent. And the latest figures we have for Russia suggest that food accounts for something in the neighborhood of half the total family spending."

I consider this proper authority in support of my testimony.

As an American citizen who has worked his way through two universities and represented both the Executive Branch of the Federal Government and American industry before the Congress of the United States, I am dedicated to the proposition that our American free enterprise system has produced the best and most reasonable standard of living in the world. I am sure there is a great deal of standardization in Russia, but look at the price.

I wish to thank you for your courtesy and understanding during the course of my testimony yesterday, and extend my very best wishes.

Respectfully yours,

FRANCIS R. CAWLEY,  
Executive Director.

Mr. CAWLEY. I attribute our successes to the productive genius of both agriculture and industry that has achieved a volume output unequalled in the world, and to our promotion and distribution efforts that have kept our products moving at low cost. This is the miracle

of free enterprise as we know it, and would not substitute it for any other system in the world.

With thousands of new products responsive to consumer demands, to be added in the next decade, can we afford to slow down the system? The Federal Reserve Bank of Dallas, Tex., recently completed a study of the farm-retail spread, which stated:

The conveniently packaged, highly standardized, and almost completely prepared commodity on display is the end product of a fast-changing food industry that sells much more than food with each unit.

And yet, our percent of disposable income spent on food is decreasing, as consumer demands mount.

Gentlemen, I have attempted to state as briefly as possible our objections here.

In closing, I wish to pay tribute to the various Federal agencies—the Department of Commerce, the Department of Agriculture, the Food and Drug Administration, the Federal Trade Commission, and finally, the U.S. Treasury, where it has been our industry's good fortune to find counsel and service of the highest quality. It has made the contributions to our programs of voluntary compliance far more effective.

We have a good system now, with even a greater potential for service. Let's leave it that way.

Thank you.

Mr. MACDONALD. Thank you, Mr. Cawley.

Are there any questions of the witness?

Mr. ADAMS. I just have one.

Mr. MACDONALD. Mr. Adams.

Mr. ADAMS. You have been in enforcement. Isn't it cheaper to do things by general legislation than have the investigative staff go to court and file many individual proceedings?

Mr. CAWLEY. No. In enforcement, sir, it is cheaper to have your investigators spot the violation. You don't have to throw them in jail the first time. The Food and Drug has authority to seize products.

Mr. ADAMS. I just asked whether or not it is not simpler to have general legislation rather than individual case-by-case investigation?

Mr. CAWLEY. We do have legislation and regulations now. For example, this one on dietary foods is a common practice. It is a 12-page regulation promulgated by Food and Drug on which all industry has an opportunity to come in and testify now. I can't see the need for this new voluntary standard provision when we have that practice right now. It is published in the Federal Register and industry can come in and testify on this before a final order is adopted. No. 1, you have a regulation.

No. 2, once that goes into effect under existing law, then I do think compliance investigators can at least on a spot-check basis verify compliance with it or, better yet, follow up complaints that have come in from consumers.

Mr. ADAMS. That is all.

Mr. KORNEGAY (presiding). Do you have any questions?

Mr. NELSEN. No questions.

Mr. KORNEGAY. Mr. Watson of South Carolina will be recognized.

Mr. WATSON. Thank you, Mr. Chairman.

I just wanted to commend Mr. Cawley for a very fine statement.

Mr. CAWLEY. Thank you, sir.

Mr. WATSON. I think it was very well prepared and should be very convincing to the mind that may be open on this subject.

How many, or what percentage of the labels do you or the members of your association provide for the manufacturers?

Mr. CAWLEY. A substantial portion. It is difficult but I am going to try to give you a direct answer.

Mr. WATSON. Give me an estimate.

Mr. CAWLEY. I would say about 30 to 40 percent.

Mr. WATSON. Thirty percent.

Mr. CAWLEY. Or more. Now, \$560 million is the value of labels manufactured in this country and that includes a lot of the cartons, tags, seals, et cetera, we do not make. If you eliminate these we do about 30 to 40 percent of labels that do two things: (1) they identify the product; and (2) they promote the sale of them. They are the powerful, but silent salesmen.

Mr. WATSON. Now some believe, especially it is the feeling of the Chairman of the Federal Trade Commission, that it is rather cumbersome, this case-by-case basis, so we want to go out and just burn down the barn in order to get rid of a few rats, we want to indict everybody because we have perhaps some unscrupulous operator. Would it not be your position, and you certainly should be in a position to know, that should a case be brought against any particular product or any deceptive labeling that immediately the whole industry would be aware of that case and would govern themselves accordingly and make the necessary modifications?

Mr. CAWLEY. Absolutely, Congressman.

Mr. WATSON. In fact, that you circularize them?

Mr. CAWLEY. Yes.

Mr. WATSON. You immediately would do it?

Mr. CAWLEY. Not only that, any company who has retained counsel expects him to follow the decisions of the courts and keep his client advised of developments.

Mr. WATSON. So this feeling that some might have that just because they bring one case against one company, that it would have no effect upon industry as a whole, that is just a figment of the imagination unless industry is a fool and will not be governed by any cases that have been brought against a particular company?

Mr. CAWLEY. You are quite right, Congressman. Another idea bothers me. I am an attorney. I have practiced law. I think each man or company is entitled to his day in court; innocent until proven guilty.

Mr. WATSON. Yes.

Mr. CAWLEY. That is American jurisprudence, as I understand it.

Mr. WATSON. That is quite ironic and I find it difficult to find the position of some of the proponents of this legislation; they are great champions who defend the right of anyone in any other area except in this particular area and now they want to issue a blanket indictment against industry. That is very disturbing to me. In fact, as you were extolling the virtues of the great, free, competitive enterprise system and how we are the best fed with the minimum percentage of our income for food, as you were relating those facts I noticed two or three



people in the audience who were laughing as you related them, and that is a serious indictment on some people.

Mr. CAWLEY. Yes, sir. Thank you, Congressman.

Mr. NELSEN. Earlier reference was made to a label on which the print was so fine that it was hard to read. Now having had experience as you have had with labels, in the event that some food processor uses a deceptive label which cannot be read, do the authorities have the power to say "listen, this is not readable, you must change it"?

Mr. CAWLEY. Congressman, if it is misleading, deceptive or illegible, the Food and Drug Administration has the authority not only to force the processor to correct the situation, but to seize the entire product on the shelf as being mislabeled.

Mr. NELSEN. Would you agree with the statement of one of the witnesses to the effect that if some practice is illegal and it is being violated, then pass another law to make it illegal once more, in order to get better enforcement?

Mr. CAWLEY. Well, first of all there are two questions there. One, I agree that we are enacting laws on laws. Secondly, I disagree that the duplication of law necessarily means you will get more compliance.

Mr. NELSEN. It makes a nice campaign gimmick, though.

Mr. CAWLEY. I don't want to get into the politics of it, Congressman, but I don't think you necessarily obtain enforcement with the enactment of more laws. You get compliance in the enforcement of laws.

Mr. NELSEN. I might point out you made reference to the request for more personnel. Appearing before this committee were people representing agencies. There are agencies in charge of enforcement and I am quite amazed to learn that actually the record does not show any great diligence on the part of these same people in enforcing the present laws. Perhaps I don't know what the record will show, there may be a backlog of complaints, I don't know. If there are complaints on file that have not been investigated, I will have little faith in the agencies that are now asking for more power if they have not already used the authority that they have.

Mr. CAWLEY. I think that is very astute, Congressman. My feeling is, and of course I have no direct knowledge, that you don't get appropriations either from the Bureau of the Budget or from the Congress of the United States unless you can make a case for them. I wonder if there is a big backlog of complaints that they have not had sufficient personnel to investigate. They do concern themselves with the general economic health and, as you know, filth and insanitation and general protection of the consumer.

I think they do a marvelous job on that. That has been their priority, so stated. The economic violations seem to have been given lesser attention.

Mr. NELSEN. I might mention that in my judgment the Food and Drug Administration has done a marvelous job in drug law enforcement, which is important—very important. They have done a very diligent, very good job, and I would not want my comment to be critical of them in this respect.

Mr. CAWLEY. I certainly am not critical of them. You look over their monthly compliance reports and the work they have done on

seizure and destruction, of contaminated and rodent infested grains and produce and that sort of thing, is an amazing job. But there is not too much evidence in here that they have seized products for having been misbranded or mislabeled, their philosophy being to place lesser emphasis on that.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. KORNEGAY. Do you have any information or evidence as to how many cases, say, within the last 5 years in which the FTC or the FDA has called anybody down for failing to comply with the law in labeling, the reference to content, weight?

Mr. CAWLEY. Sir, I can not give you the volume but I do hear from our label manufacturers from time to time about seizure, impoundment, restriction, or forbidding the use of certain types of labels which have been in violation, not necessarily manufactured by our people. I am not impressed that the FDA volume has been great.

Mr. KORNEGAY. Before somebody comes to one of the members of your association they lay it out and they tell the label man what they want; don't they?

Mr. CAWLEY. Yes.

Mr. KORNEGAY. And they tell you how big they want the print?

Mr. CAWLEY. Yes.

Mr. KORNEGAY. If they insisted on very small, illegible prints as to its content—

Mr. CAWLEY. Our people would not print it.

Mr. KORNEGAY. You don't think they would print it?

Mr. CAWLEY. No, sir. They are fully informed on legal requirements.

Let me give you one example now. Last week one of our manufacturers called me and he said, "Look, I have got 15 labels in here for 303 can size on vegetables." He said, "The producer is just worried sick about this new law." He said he has the net contents all over the thing.

I said, "Why don't you send some down and let me look at them." He had them in I guess about 18-point type.

Mr. KORNEGAY. That is pretty big.

Mr. CAWLEY. It is. He had it on the consumer panel, on the information panel, and on the ingredients panel. He had it in three places on each label and it was very visible. The thing that startled me was that among these labels affecting 15 cans of vegetables, the weight varied from 15¾ ounces to 16½ or something like that. There was a tremendous variation on the same size can because of weight density of the different products. That is why I asked the question: Do we place standards on commodities or products? If you put this weight standard into effect, that is, no fractional ounces on vegetables it is very true as the canners have testified, that you are going to have a proliferation of cans all over the place just to get standards weights.

Mr. KORNEGAY. Getting back to my question, I want to find out whether the FPC and FDA were paying attention to this business of adding legible quantity sizes on weight and if they are, whether or not they are taking the action to prevent unfair deceptive practices?

Mr. CAWLEY. Well, sir, now your question is directed just to print size?

Mr. KORNEGAY. Yes. If I go into the store and pick up a can of beans and see on there how much is in it and see how much it cost, then if I have any training in arithmetic I ought to be able to tell how much it cost per ounce.

Mr. CAWLEY. Yes, sir.

Mr. KORNEGAY. But if I can't find it on the can, how much is in it, then it is impossible for me to find out how much it cost per ounce.

Mr. CAWLEY. I can't give you a specific case on size of print but I know they have authority to go in and do something about that on proper complaint.

Mr. KORNEGAY. Let me ask you a question: In your opinion, would it facilitate or assist those people who have trouble in making price comparisons if contents were expressed in ounces rather than in combination of ounces and—for example, speaking in fluids, rather than saying 1.6 ounces say 22 ounces?

Mr. CAWLEY. No; I don't think it makes any difference.

Mr. KORNEGAY. Well, now, in going through these, some of the major concerns—I am not saying this is a fact, but this is a concern that has been expressed—is the difficulty that the housewife has in computing the actual quantity in a container.

In other words, they are assuming the housewife knows how many ounces in a pint, how many ounces in a pound so you go to the ounce method altogether.

Do you care to express yourself on that? In other words, if every container had the contents in terms of ounces, either fluid of pint and quart, go through the arithmetic of translating pounds and pints into ounces?

Mr. CAWLEY. Of course, I would take 16 ounces and add the balance but I think there is merit in standardizing on an ounce basis if you want to do it that way for price comparisons. Again, Congressman, I come back to this matter of price.

Mr. KORNEGAY. Well, is there any real reason why the manufacturers use the pints plus ounces or pounds plus ounces?

Mr. CAWLEY. Yes. It has to do with, first of all, let's say, the fractional ounces. That has to do with using the common sizes, you understand that.

Mr. KORNEGAY. Yes. Take, for example, fruit juices. You will see on there this contains 1 quart 6 ounces, or 1 pint 6 ounces or 1 pint 10 ounces.

Mr. CAWLEY. I think it is more understandable for the average person to have it in terms of 1 pint 6 ounces or 1 quart 6 ounces.

Mr. KORNEGAY. I sometimes think one of the biggest problems is we should use the metric system. These could all be expressed so these people could understand it. Then we would have to educate the entire consumer population.

Mr. CAWLEY. First of all, we are on avoirdupois; that is, substantive weight, except in a few States where again the Federal law has preempted the State. However, Canada will require by next January 1 a fluid-ounce basis for a great deal of their material. So you

are going to force the American producer who exports into Canada to have two different sets of weights and measurements, avoidupois in this country and fluid in that country. I think that is going to be more costly and confusing.

Secondly, on this matter of price, a friend of mine who does a rather careful shopping job went into a market one day for a product that was small, medium, and large and he had always found that the large size was the best buy. That day, however, with some fast mental arithmetic, he found out the medium size was the best buy so he bought the medium size. He went over and talked to the manager. He said, "How come the medium size is the best buy?" and the manager said, "they were not moving very fast so I just cut the price on them."

Mr. KORNEGAY. Well, thank you very much, Mr. Cawley, for your testimony.

Mr. CAWLEY. Off the record.

(Discussion off the record.)

Mr. CAWLEY. Congressman, back on the record I would like to answer that question. A lot of people have said to me, Frank, this could mean a lot more business for the label manufacturers. First of all, maybe for the short term it will, but let's assume you have everything standardized. In the long pull it is going to reduce our labels and furthermore, we can't very well come before this committee and support legislation which is contrary to everything we worked for for the last 50 years.

Mr. KORNEGAY. You say "supervision," you were testifying just a few minutes ago, which usually tends to add credibility to the testimony of anybody.

Mr. CRAWLEY. Thank you. We are very much interested in voluntary compliance with existing laws and we work day and night on them.

Mr. KORNEGAY. I am glad to hear that because I think it ought to be enforced and if it is not a good law that we withdraw it by due process. It is good for the country. I think Government agencies ought to carry out their responsibilities. I think they try as best they can but this is a big field. I don't want to see us in Government hands but comment on American industry to the point that we would be effective.

Thank you very much.

The committee will stand adjourned until 1:30 this afternoon.

(Whereupon, at 12:35 p.m. the committee was recessed, to reconvene at 1:30 p.m. the same day.)

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

For witnesses we have Mr. Ernest Giddings, the legislative representative and Mr. Alan Mercill, legislative assistant, American Association of Retired Persons. Would they come forward, please. I am sorry, gentlemen, we have to continue at this hour but it seems to be necessary in order to proceed.

If you will take your seats at the table you may proceed in your own way.

**STATEMENTS OF ERNEST GIDDINGS, LEGISLATIVE REPRESENTATIVE; AND ALAN MERCILL, LEGISLATIVE ASSISTANT, NATIONAL RETIRED TEACHERS ASSOCIATION, AMERICAN ASSOCIATION OF RETIRED PERSONS**

Mr. GIDDINGS. Thank you, Mr. Chairman.

My name is Ernest Giddings, I am the legislative representative of two nonprofit organizations, the National Retired Teachers Association and the American Association of Retired Persons. With me is our legislative assistant, Mr. Alan Mercill. We appear before you today on behalf of the 1,100,000 members of these 2 associations to voice our support of H.R. 15440, the Fair Packaging and Labeling Act.

The membership of NRTA consists of approximately 200,000 retired teachers. The membership of AARP consists of approximately 900,000 retired persons age 55 and over. National, State, and local chapter officers of the 2 organizations number between 700 and 800 persons.

Of the many services performed by our groups, the most significant are: (1) the preparation of monthly publications that contain information of interest to our members, (2) a low-cost travel service, (3) low-cost health insurance plans, some of which are designed to supplement medicare, (4) a nationwide drug service, (5) a full program of educational courses offered through the Institute of Lifetime Learning, (6) a nursing home program, (7) a consultant service to private industry and Government on preretirement and retirement programs, and (8) a consultant service to churches of all denominations on problems of older persons.

As the above list indicates, we have worked and will continue to work toward solving the particular problems of the aged. Our past and present support of legislative efforts to eliminate deceptive packaging and labeling is but one illustration of our concern for the older American.

**INCOME LIMITATION OF THE AGED**

At the end of June 1966, there were 18.5 million persons age 65 and over in the United States, almost 1 of every 10 Americans. Forty-four percent of these people are currently existing on annual incomes of under \$3,000. In fact, according to the latest figures, 5.4 million persons past 65 have yearly incomes of less than \$1,850. Of the more than 18 million persons over age 65 in the United States today, more than 7 million are termed "poor," or 1 in 5 of all the poor.

Most elderly persons have a fixed income, one that does not rise in periods of inflation. As a recent report from the Office of Economic Opportunity points out:

Time holds forth no promise for the aged as it does for youth. As they grow older, they grow poorer. For many the chance to make their way out of poverty through employment is small; their health is poor, their education limited. Inflation gradually erodes their purchasing power; real income diminishes.

This legislation is of more significance to the elderly than to anyone else. This is so because not only do the elderly have an income that is lower and more static than the income of younger persons, they also

spend, as a general rule, a larger proportion of their income on packaged and labeled goods.

The cost of food is the major item in the older person's budget. And he who has so little to spend can afford no mistakes in making his buying decisions. But still it has been said that food is the biggest bargain among living expenses today. The American homemaker has been pictured as a "tiger," stalking the grocery aisles like a beast of prey, searching for the best of values. Home economists are fond of announcing budget plans which tend to prove that the housewife can purchase nutritional meals for mere "pennies a day." All Mrs. Homemaker has to do is have the time and skill to shop wisely—planning her meals, checking the food ads, and then going from store to store for the items she previously selected.

But this is not the case for the older person, 44 percent of whom live alone. He is forced by lack of mobility to shop in small neighborhood stores rather than supermarkets, and must purchase in small quantities. The sales and the large economy sizes mean nothing to him.

The elderly poor are tied to their old neighborhoods by economic necessity—to houses that deteriorate as rapidly as their own bodies—trapped because they cannot afford to move elsewhere. They are bound also to the man who will advance groceries on credit, and to the one who still makes deliveries. Like everything else, these services cost money. Couple these economic forces with a constantly rising cost of living and it is plain to see that the poor do pay more.

The income limitations of our older citizens force them to select goods at a reasonable price for the quantity purchased. But often the elderly, as well as all consumers who are not skilled mathematicians, find themselves unable to make reasonable selections among competing products. Through the not-so-subtle pressure generated by the packages on the shelves, the aged individual is deprived of a better bargain.

#### CONSUMER PSYCHOLOGY

At the present time there are more than 8,000 separate commodities sold on grocery shelves. Each is packaged so as to induce the shopper to choose it over its competitors. Sometimes, however, the promotional desire of the packager has denied the consumer the ability to make easily computed price comparisons. In other cases the total effect of the package will lead the unwary shopper to the belief that he has purchased a bargain, when in fact he has not.

Visualize, if you will, four brands of instant mashed potatoes, all of which are packaged in the same size box. Three of the brands are marked "1 lb. net wt.," the other "1 lb. .5 oz. net wt." You had this example brought to your attention this morning. All four brands bear the identical price. Assuming you were not wedded to the flavor of one particular brand, which one would you be likely to purchase? Our correspondent bought the latter brand because, as he put it, he "saw 5 ounces more for the same price." He went on to say, however, "when I arrived home with my purchases, I noticed that decimal point in front of the ".5 oz." which means that this package was just one-half an ounce more than the other brands. Pretty sneaky, eh?"

I should point out to you that this label is legal in some States. It is not deceptive in a legal sense to use this package under present law since it is marked with the decimal before the 5 ounces.

However, the bill before you, H.R. 15440, would require listing it as 16.5 ounces or 16½ ounces.

It has long been known that another type of consumer psychology affects many pricing techniques. One study, for example found the most popular grocery prices to be 39, 29, and 49 cents. Thus when a manufacturer introduces a new product, he naturally tries to fit it into one of these "magic" categories. If a change in his production costs occurs, he may be forced to adjust the package quantity downward to maintain profit margins. Often, however, the price and the size of the container remain the same as before. And unless the shopper customarily examines the net weight of every package she places in her cart, she may never know the actual cost of her item has increased.

#### LOOKING AT THE FACTS

It is our understanding that the Fair Packaging and Labeling Act, if enacted, will not inhibit package innovation—nor will it affect the full pursuit of free enterprise. Opponents may argue differently, citing provisions that would permit Federal agencies to standardize packaging on a product-line basis. But what these persons overlook is that no standard can be arbitrarily set by a government official. Standards of weights and quantities can only evolve after some of the most elaborate due process safeguards ever devised have been utilized. These procedures, which involve public hearings and independent analysis are, to us, an absolute guarantee against infringement of private enterprise.

We of NRTA and AARP believe that most manufacturers and all consumers, aged or young, benefit when the consumer can make reasonable choices among competing goods. When, through deceptive packaging and labeling, the consumer cannot intelligently assess quantity, quality, and price, only the dishonest packager or manufacturer benefits.

There can be no valid objection to what this legislation is intended to do. For as the bill states, "informed consumers are essential to the fair and efficient functioning of a free market economy."

It may appear that only pennies are involved, and in the case of a single purchase it is so. But we believe that the total economic effect is disturbing to the individual consumer and to the economy as well. The consumer who is a retired person on a small pension, or a worker who must support a large family, is the one most likely to seek the bargains as the best buys. If, through deceptive packaging and labeling, he is unable to do this, he spends more for food than is necessary and the pennies spent add up to dollars.

Today there is much talk about preventing inflation. But has anyone realized the inflationary effect if consumers who purchase \$80 billion worth of packaged goods each year spend even 5 percent more than is needed?

The consumer will spend less if he can, which is what he is asked to do to prevent inflation, but he cannot do so if he is unable to determine which product is the best bargain. Enactment of H.R. 15440, the Fair Packaging and Labeling Act, will give him a tangible weapon in the fight against the high cost of living.

Now, Mr. Chairman, if it meets with your approval, I would appreciate it if my colleague, Mr. Mercill, could comment on a few of the controversial points that have come up in the last few weeks as he has listened through your hearings that we did not include in the statement.

The CHAIRMAN. I might say to you that our time is limited. We have to go for a vote but I would be glad to hear from you briefly.

Mr. MERCILL. Thank you, Mr. Chairman.

Let me make it clear that we are not here primarily concerned with standardization. We do not advocate standardization of packaged products. We are concerned with the labeling provisions in section 4 and those in section 5(c) (1) through (4). This is what we are interested in. We are not afraid, however, of the provision 5(d) (2). If the wording is strictly interpreted, I think it is sufficient to handle any standby power that the agencies in question would need.

As far as section 5(c) (5) is concerned, this provision was in the original Senate bill 985 but was dropped in committee. Perhaps a member of the Commerce Committee of the Senate could answer better than I, but I believe that section is redundant in the sense that present law is sufficient, in many cases, to handle positive misrepresentation.

The deception that we speak of here today is not deception in the legal sense as I interpret it. It is simply an act on the part of a particular manufacturer calculated to confuse the public.

I have spoken to representatives from the Weights and Measures Bureau in West Virginia and the District of Columbia and they say that our example used would be illegal for two reasons: (1) decimal fractions are not permitted in these jurisdictions; although in other States, they are, and (2) this certification of servings overshadows the small print of the net weight. They feel this would confuse the buyer.

There have been several objections to this bill. There are actually four and if I have the time I would like to comment on them.

The CHAIRMAN. If you would do so briefly, you may.

Mr. MERCILL. Opponents state that the present law is adequate. I think for positive misrepresentation it is adequate.

But to say that more vigorous enforcement is all that is needed, to me, presupposes that the producers involved are deliberately violating existing law. Now, I do not think that this is true because it would seem to me that before a producer spends any money on a package and labeling change, it would be likely that such changes would have to be approved by their counsel. I seriously doubt any lawyer would approve of a package that he believed to be illegal under present law. Yet the examples shown to this committee do abound in the marketplace.

The wording under the present law, I think, is sufficient to handle positive misrepresentation, but when section 5 of the Federal Trade Commission Act says, "unfair methods of competition in commerce or deceptive acts or practices in commerce are declared unlawful," what is the definition of unfair? I think it is whatever a judge or jury in a particular jurisdiction would choose to hold at a particular time in a particular case.



Second, section 343 of the Food, Drug, and Cosmetic Act speaks of false or misleading labels. What is "false" or "misleading"? This depends again on the particular case before the judge or jury.

Prominence of the information on the label—well, who is to say what is or is not prominent unless you go on a case-by-case basis.

But if it is blatant, if it is a positive misrepresentation, the agencies do have the power to act.

It has been said that the consumer can only be fooled once. Well, the law seems to allow a dog only one bite, but is this committee going to allow a manufacturer 193 million? That argument is based on two false premises: It assumes the consumer will discover readily that she has been fooled. In cases similar to our friend from Missouri, they may not look, so I do not think that a consumer will always know.

It also assumes that the offending packager will always have competitors who offer packages which do not follow the offending practice.

Increased cost in both production and administration is the third argument advanced by opponents of this legislation. The examples given, in cereals and in the canning industry, tend to illustrate what would result if an administrator more or less ran amuck with authority in areas where reasonable rates and measures would not make good sense. The provisions in the bill should not be judged on what arbitrary and unreasonable men would do. If that were so, the administrative agencies which would handle this bill might as well be disbanded. As a point of fact, the courts are available to strike down an arbitrary decision by an administrator. The very provisions of section 7 of the Administrative Procedure Act indicate that all parties have a right to be heard and if a regulation is passed affected parties have a right to judicial review.

Thus, to base cost estimates on an administrator who might act capriciously is like opposing all law because there may be an incompetent or drunken judge. No weights or measures can be established in a product line which are inconsistent with existing standards, such as in the canning industry, so I think that argument is specious.

The fourth argument is that package improvements would be curtailed if this bill is passed. This bill relates to quantities, weights, and labels. It has nothing to do with the product therein. Colors, designs, and imaginative display would not be affected. Standards would not suppress package ingenuity.

The complaint has been made that the bill says nothing about quality. Well, so what? All the bill says is the first step in a buying decision must be the price. Quality is something you cannot legislate.

I cannot understand why producers disagree. In buying raw materials, for example, they consider price of great importance. In many instances, they fit a product into a magic price category. There is a study prepared in 1958 by an advertising agency in New York which seems to indicate that cost and pricing categories are the main reason why a company will introduce a product at a certain price. Quality is price oriented. How much quality can be put into a product that must sell at a certain price is the question producers decide before introducing a new item.

The CHAIRMAN. Mr. Moss, do you have any questions?

Mr. Moss. Regrettably, Mr. Chairman, because the second bell has rung, we are required on the floor, and I will have to abstain from questions.

The CHAIRMAN. I want to thank both of you and I want to apologize for the shortness of time because I think your statement has been very informative and I regret that the full committee was not here to hear it and question you. I think you perhaps could have responded to questions which arose in their minds and they would want to ask you some of these questions. But we have to hurry everything and sort of cut things short. It is not a good way to proceed, I will agree, but I do want to express our appreciation to both of you for coming and giving us the benefit of your views.

Thank you very much. This concludes the witnesses for today and hearings will be resumed next Tuesday at 10 a.m. All public witnesses who have not been heard will be scheduled for either Tuesday, Wednesday, or Thursday of next week, and we will conclude the hearings next week as far as public witnesses are concerned.

Thank you, and the committee is adjourned until next Tuesday.

(Whereupon, at 2:05 p.m., the committee was adjourned, to reconvene at 10 a.m., Tuesday, August 30, 1966.)

## FAIR PACKAGING AND LABELING

TUESDAY, AUGUST 30, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123 Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We resume our hearings this morning on the fair packaging and labeling bills.

As our first witness this morning we have scheduled Mr. Andrew J. Biemiller, director, Department of Legislation, AFL-CIO, but I understand Mr. James F. Doherty, legislative representative will take his place. Is he here this morning?

Mr. DOHERTY. Yes, sir.

The CHAIRMAN. Would you come forward, sir.

We are glad to have you. I notice your statement is real short.

You may proceed, sir.

### STATEMENT OF JAMES F. DOHERTY, LEGISLATIVE REPRESENTATIVE, AFL-CIO; ACCOMPANIED BY ANNE DRAPER, RESEARCH ASSOCIATE, WASHINGTON, D.C.

Mr. DOHERTY. Mr. Chairman and members of the committee, my name is James F. Doherty. I am the legislative representative for the American Federation of Labor and Congress of Industrial Organizations.

I am accompanied this morning by Miss Anne Draper who is a research associate specializing in consumer affairs.

The AFL-CIO represents its 13½ million trade union members and their families not only with respect to their direct interests in their jobs, but in matters that involve their general welfare. None is more closely linked to their daily lives than the problems they face as shoppers and buyers in the Nation's consumer markets. Wages earned on the job go directly to the purchase of goods and services for the household. Organized labor has a genuine stake in the well-being of its members as consumers as well as producers.

I am happy to be here today in support of truth-in-packaging legislation and specifically to testify on H.R. 15440 and S. 985.

These two bills actually have a long history, beginning with the 1961 investigations of the Senate Antitrust and Monopoly Subcommittee. Truth in packaging has an equally long record of support by the AFL-CIO.

At its most recent constitutional convention in December 1965, the AFL-CIO again called for enactment of a truth-in-packaging bill. The pertinent portion of the resolution reads as follows:

We urge prompt enactment of a "truth-in-packaging" bill to stop deceptive labeling and packaging of consumer products and to establish ground rules for reasonable standards for weights and measures in consumer products.

I plan to proceed by first stating the general case in behalf of truth-in-packaging legislation. And then I should like to make a few specific comments on the particular bills under consideration by the committee.

The general case for truth-in-packaging legislation starts with the fact that a "packaging revolution" has taken place over the past two decades and has outstripped the capacity of existing legislation to deal with it. Today there are an estimated 8,000 packaged items on the shelves of the average supermarket, a volume which is expected to reach 20,000 in the next decade; 20 years ago this number was only 1,500.

Faulty packaging may have been tolerable when there were fewer packages to cope with, but the package has now reached a predominant position on our store shelves. It has become an important competitive sales tool for the vending of particular brands, asserting the unique qualities and superiority of the product inside, and urgently pressing the shopper to buy. Packages have become gloriously differentiated as to materials, colors, shapes, sizes, weights, pictures, and printed sales claims.

But the untrammelled growth of packaging has created a serious problem of confusion for the consumer who seeks to buy the necessities and some of the amenities of life and at the same time stay within the family budget.

The basic problem is that of straight information as to what is actually inside the package, how much, and how the packaged product compares in price with other packaged products.

Because the package is self-selling, it has largely replaced the sales clerk as a source of information. Because products are priced and sold by the package rather than by the pound, the quart, or the ounce, a comprehensible and rational system of weights and measures has virtually disappeared from the retail marketplace. Price comparisons have become a difficult exercise in time-consuming mathematics. The deterioration of the opportunity to make comparisons on a price-per-ounce, pound, or other standard-quantity-unit basis has opened the door to other packaging abuses—such as the deceptively designed or shaped package, made to look bigger than its competitors and encouraging the shopper to buy on the mistaken notion that it supplies a larger amount of product for the price. It has also enabled producers to conceal price increases by the simple device of shaving the package contents quantity while keeping the package price the same or even reducing it on a less-than-proportionate basis.

Let me illustrate with a few concrete examples:

With respect to label information, concern for sales messages and attractive package design has often all but crowded the information as to quantity of contents off the package. Instead of being printed boldly on the front in easy-to-read type, it is likely to appear on the back, or up the side of the package in illegible print, white on yellow.

On some liquid shampoo bottles, for example, you have to turn the bottle around and read the quantity statement through the contents of the bottle, since they are printed on the back of the front label.

Sometimes net quantity appears more boldly, but as part of an advertising claim, such as the "jumbo quart," or the "big 12 ounces" implying that the quart or ounces in question are enlarged over the usual amount.

Pictures on packages may or may not be a reliable guide to what is inside. Does the pork in the picture on a can of pork and beans show up at all as prominently on the inside of the can as it did on the outside? Are the chocolate chip cookies inside the box nearly as well laden with chocolate chips as they appeared to be in the picture on the outside?

Labeling abuses also extend directly into the area of package prices, principally through manufacturers' labeled offers of "cents off" the regular price and price savings on large, economy-size packages. Such promises are inherently improper since the manufacturer does not establish the retail price. The retailer may or may not pass on the price savings to the consumer. This type of abuse is illustrated by the shopper who reported buying a 1½-pound jar of peanut butter for 69 cents. Two weeks later, she noticed that a 2-cents-off offer was made for this jar, but that the price had risen to 71 cents. Still later a 4-cents-off offer was made on the label, and this time the price was stamped at 73 cents.

"Cents off" offers are very widely used. I am attaching an exhibit (exhibit I) illustrating the use of "cents off" labels for instant coffee. This exhibit also illustrates another twist on this same problem, namely the "free ounce" offer. In this situation, the manufacturer offers a larger size jar for the "regular price" of a smaller size jar: "Buy 10 ounces, get 12"; "25 percent more and 4 cents off"; "7 ounces for price of 6." There is no immediate way of knowing, of course, whether the larger amount is actually being sold for the price of the smaller amount or not.

Distressing as labeling difficulties have come to be, probably the most serious problem the packaging revolution has brought about is chaos in the field of weights and measures.

Thus a shopper no longer buys candy A at 70 cents per pound and candy B at 75 cents per pound. She is more likely to be faced with a choice between 15 ounces of candy A for 66 cents and 13½ ounces of candy B for 63 cents. In this instance, candy B actually looks cheaper, although, of course, it is more expensive, but who has time to do the calculations to find out?

I am attaching as exhibit II, a list of actual prices and weights shown for 24 packages of cookies, originally submitted by Consumers Union in hearings last year before the Senate Commerce Committee. Only two of the packages were sold in 1-pound weights. The others appeared in such combinations as 6½ ounces for 25 cents, 7¾ ounces for 29 cents, 13¼ ounces for 43 cents, and so on. This type of illustration could, of course, readily be repeated for other lines of products in the modern grocery.

The point is that in making a choice between different types of cookies, detergents, shampoos, crackers, et cetera, the shopper should be entitled to know, as a matter of basic information what the comparative prices are in relation to quantity. She may indeed prefer

brand A to brand B for reasons of quality, efficiency, or performance or other characteristics but she should know at the outset whether she is buying a more or less expensive product in terms of quantity.

It is a certainty that we are not going back to the days of open barrels, bins, and counter shelves when prices were marked per ounce and per pound. The package is here to stay and its many benefits in terms of convenience, cleanliness, and attractiveness are surely welcome. But the situation in which the package itself has become the unit of measure clearly requires some reasonable degree of standardization of quantity units in which packaged commodities may be sold, if the consumer's right to make rational price comparisons is to be restored.

The unrestricted proliferation of weights and measures in which packaged products are sold has also contributed to concealed price increases and to instances of deceptive packaging.

A recent illustration of this phenomenon was reported in May 1966 by the Consumers Cooperative of Berkeley with respect to facial tissues. The old box contained 150 2-ply tissues, 9½ inches by 8½ inches and sold for 21 cents. The new box was exactly the same size as the old and sold for the same 21-cent price, but its contents were reduced to 125 2-ply tissues of slightly smaller size (9.42 inches by 8½ inches). A buyer is scarcely likely to realize that the unit price per 100 sheets has gone up from 14 to 17 cents.

I am attaching as exhibit III an earlier report by the Berkeley Cooperative on changes in cereal and cereal packaging during the period March 15 to April 15, 1966. Not all of the changes were for the worse, but they illustrate the problem of frequent shifting of individual package contents in relation to price and size of package.

A related problem, which contributes to the difficulty of making price comparisons between different packaged commodities, is the fact that our system of weights and measures allows for a number of different ways of expressing quantity units. One letterwriter, for example, whose complaint was printed in previous hearings, was confronted with a choice between one tube of ointment containing 4 ounces for \$1.35 and another labeled at 42 grams for 81 cents.

The more common experience, perhaps, is that of being faced with a comparison such as 1½ pints and 1 pint 8 ounces—exactly the same, but requiring some thought to realize it, particularly when other sizes such as 1 pint 6 ounces are also on the shelf. I am attaching exhibit IV on bottles of cooking oils, which illustrates this problem.

It is theoretically possible for the same fluid quantity to appear variously as 1¾ quarts; 1 quart, 1½ pints; 1 quart, 1 pint, 8 ounces; or 1 quart 24 ounces.

Finally, the confusion of the marketplace is compounded by the private language of different manufacturers as to what constitutes a "serving" and how large is "large," "king," or "giant."

What do all these practices add up to? They add up to the demonstrable fact that the modern shopper is rarely able to make a truly informed choice in the marketplace, among the myriad choices available.

Those who consciously shop for the greatest quantity for the lowest price are likely to fail. Two often-mentioned studies attesting to this fact are those conducted by Mrs. Helen Nelson, consumer counsel of California in 1961 and more recently by Monroe Friedman of Eastern

Michigan University. Mrs. Nelson sent out five housewives, all with college training, to select the "best buys" in a typical Sacramento supermarket among 14 packaged items. On only one item were all five shoppers successful and with two of the items none were successful. For most of the items, the batting average was about 50 percent.

In Mr. Friedman's study, 33 young housewives were sent out for the best buys for each of 20 products on sale at a selected supermarket. They made mistakes in 43 percent of the cases. And these mistakes cost more than 9 cents extra on every dollar spent.

In approving S. 985 on June 9, the Senate of the United States has clearly given recognition to the unprecedented situation that the packaging revolution has produced in the modern marketplace. And by its action, it has clearly rejected the argument that existing laws governing packaging practices are adequate. They are not adequate, even where they theoretically apply. And in the most important area of all—that of the proliferating jungle of quantity units in which packaged products are sold—no legislation exists at all, except in a few specialized areas such as in the sale of liquor, which comes in such standardized quantities as pints, fifths, and quarts.

Neither S. 985 nor H.R. 15440 cover the complete catalog of unfair packaging practices and the remedies against some abuses are relatively weak. H.R. 15440 is virtually identical to S. 985, but provides more protection to buyers by including provisions to curb packages of deceptive shapes, sizes, or proportions in section 5(c) (5). Such provision is completely omitted in the Senate-passed bill. Neither bill authorizes any action to prevent deceptive illustrations and pictures, and so both are defective in this respect.

We are in accord with the basic approach of the proposed legislation, which in section 4 requires the Secretary of Health, Education, and Welfare and the Federal Trade Commission to issue regulations on certain labeling requirements and in section 5 authorizes these agencies to issue regulations on other specified aspects of packaging if it is found necessary to prevent the deception of consumer or to facilitate price comparisons.

We support the mandatory labeling requirements as set forth in section 4, but we believe this section should be expanded to include an overall prohibition on labeled "cents-off" and "economy-size" offers. We do not think that it is practicable to regulate or police these offers in such a way as to guarantee their honesty, because of the inherent problem posed in having retailers observe promises made by other parties. As the proposed legislation is presently written, authority to deal with this problem is placed in the so-called discretionary portion of the bill, section 5, which makes action contingent upon an administrative finding of specific need to act to prevent deception of consumers or to facilitate price comparisons.

We also believe that section 4 should be expanded to require the promulgating agencies to issue regulations against deceptive pictures and illustrations.

Section 5 establishes regulatory authority, to be used on a discretionary basis, covering not only "cents-off" and "economy-size" offers, but also definition of size classes, such as "small," "medium," and "large"; definition of "servings," disclosure of ingredients and composition, and standards of reasonable weights and quantities for the sale of packaged commodities. H.R. 15440, but not S. 985, includes an

additional provision on packages of deceptive sizes, shapes, and proportions.

Our principal criticism of section 5 is the excessive limitations and procedural hurdles written into the language of both bills with respect to the establishment of reasonable weights and quantities. These appear in subsections (d), (e), (f), and (g) of section 5 of the proposed legislation.

Strong procedural safeguards against arbitrary administrative decisions are provided by section 6 of the bill for all areas where administrative regulation is involved, through reference to the rulemaking procedures under the present Food, Drug, and Cosmetics Act. These procedures provide for initial publication of any proposed regulation, opportunity for written or oral comment, republication of the proposal, opportunity for further objection to the proposal and request for public hearings, and finally, opportunity for judicial review. Such proceedings often take years to complete.

We believe that these procedures are sufficient for issuing regulations on quantity units of packaged products as well as on other packaging and labeling practices covered by the bill. The additional requirements for an initial hearing under the Administrative Procedure Act, followed by the opportunity for a circuitous route through voluntary standards procedures in the Department of Commerce, may seriously reduce the effectiveness of the law.

We would point also to the many specific limitations written into the bill with respect to the standards that may be established. Thus no standard may differ from a voluntary product standard developed in the Department of Commerce, no standard may be set for amounts less than 2 ounces, no standard may disturb package sizes customarily used for related products of varying densities unless the continued use of the package is likely to deceive consumers, and numerous factors listed in subsection (g) must be taken into account in arriving at the standard.

We appreciate, although we do not share, the manifold anxieties of manufacturers and packagers that have resulted in these extensive limitations and procedural safeguards. But we have even greater concern that the consumer's needs may lose out in the process. We respectfully urge the committee to eliminate excess baggage burdening the promulgation of regulations for the establishment of reasonable weights and quantities in which packaged products are sold.

We would further point out that the need for including regulatory authority against deceptive shapes, sizes, and dimensional proportions becomes especially urgent if authority to standardize quantity units is lacking or is ineffective. We have always believed that much of the problem of oversized containers and optical illusions would be offset if only the actual quantities in competing packages could be stabilized and recognized by the consumer. There would not be, for example, the problem of the 5-ounce jar of coffee made up to look like a 6-ounce jar if the weights ran in standard 2-ounce multiples. If we do not need to rely heavily on the package shape or size itself as a guide to its contents, its deceptive appearance loses some of its persuasive power.

Appropriate regulatory authority is included in H.R. 15440 in section 5(c)(5). We ask that it be included in the final bill to supplement the provisions on standard quantity units for packaged products.



Mr. Chairman, this concludes my general comments on the proposed Fair Labeling and Packaging Act. We urge favorable and prompt action by the committee on this proposed legislation.

Thank you, sir.

(The exhibits previously referred to follow:)

## EXHIBIT I

*Instant coffee jars, Safeway Supermarket, Arlington, Va., Apr. 26, 1966*

Brand	Size	Savings offer	Price
	<i>Ounces</i>		
Marwell House.....	14		\$2. 09
Do.....	10		1. 53
Do.....	6		. 95
Do.....	2		. 49
Yuban.....	9		1. 57
Do.....	5		. 99
Do.....	2		. 49
Nescafe.....	12	Buy 10 ounces, get 12; 2 ounces free.....	1. 49
Do.....	10	20 cents off.....	1. 49
Do.....	6	10 cents off.....	. 85
Do.....	2½	25 percent more and 4 cents off.....	. 45
Airway.....	12	35 cents off.....	1. 30
Do.....	8	25 cents off.....	. 89
Do.....	6	20 cents off.....	. 69
Do.....	2		. 35
Safeway.....	10	30 cents off.....	1. 15
Do.....	6	20 cents off.....	. 69
Do.....	2	5 cents off.....	. 40
Chase & Sanborn.....	7	7 ounces for price of 6 plus 10 cents off.....	. 85
Do.....	2	4 cents off.....	. 45
Wilkins.....	6	20 cents off.....	. 99
Do.....	2		. 49
Luzianne.....	6	20 cents off.....	. 75
Do.....	2	8 cents off.....	. 39
Bordens.....	5	10 cents off.....	. 73
Chock Full O'Nuts.....	5		. 98
Old Mansions.....	6	10 cents off.....	1. 05

Source: AFL-CIO Department of Research.

## EXHIBIT II

*Nabisco and Sunshine cookies, First National Supermarket, Westchester County, N.Y., week of Apr. 26, 1966*

	Weight	Price
		<i>Cents</i>
Nabisco:		
Vanilla wafers.....	12 ounces.....	39
Cracker Chatter.....	9½ ounces.....	49
Oreo.....	1 pound.....	49
Do.....	11 ounces.....	39
Do.....	6½ ounces.....	25
Ginger snaps.....	1 pound.....	43
Assorted sugar wafers.....	6½ ounces.....	31
Sugar wafers.....	9½ ounces.....	41
Merri rolls.....	7½ ounces.....	49
Swiss rolls.....	do.....	49
Butter cookies.....	7 ounces.....	25
Pride assortment.....	11 ounces.....	39
Lorna Doone.....	10 ounces.....	43
Sunshine:		
Butter cookies.....	8 ounces.....	29
Nobility assortment.....	1 pound.....	59
Hyde Park assortment.....	12 ounces.....	39
Chocolate chip.....	7¾ ounces.....	29
Clover Leafs.....	6½ ounces.....	33
Yum Yums.....	11 ounces.....	49
Sugar wafers.....	13¼ ounces.....	43
Vanilla wafers.....	12 ounces.....	35
Ginger snaps.....	1 pound.....	43
Chocolate nuggets.....	7 ounces.....	29
Oatmeal cookies with raisins.....	14 ounces.....	39

Source: Consumers Union.

## EXHIBIT III

*Cereal changes found in 1 month, Consumers Cooperative of Berkeley, Inc.,  
Mar. 15-Apr. 15, 1966*

	Weight	Price	Box	Price per pound
<b>Spoon-size Shredded Wheat</b> (Nabisco):		<i>Cents</i>		<i>Cents</i>
Old.....	11½ ounces.....	31		43
New.....	12 ounces.....	31	Shorter, slightly deeper.....	41
<b>Team Flakes:</b>				
Old.....	11 ounces.....	35		51
New.....	do.....	35	Shorter, slightly deeper.....	51
<b>Cream of Rice:</b>				
Old.....	1 pound 1¼ ounces.....	45		41
New.....	1 pound.....	45	Slightly smaller.....	45
<b>Fishers wheat germ:</b>				
Old.....	1 pound 4 ounces.....	41		33
New.....	8 ounces.....	29	Smaller, table size.....	55
<b>Wheat Chex:</b>				
Old.....	1 pound 2 ounces.....	39		35
New (new process, lighter).....	14¼ ounces.....	39	Same size.....	43
<b>Corn Chex:</b>				
Old.....	8 ounces.....	25		44
New (new process, lighter).....	do.....	25	Same size.....	50
<b>Chex-Mates:</b>				
Old.....	9 ounces.....	43		76
New.....	7¼ ounces.....	43	Same size.....	57
<b>Shredded Wheat (Sunshine):</b>				
Old.....	12 ounces.....	27		36
New.....	11 ounces.....	27	Same size.....	30

## EXHIBIT IV

*Cooking oil quantities, Safeway Supermarket, Arlington, Va., Apr. 26, 1966*

Brand and type	Size	Price
<b>Crisco (soybean)</b> .....	12 ounces.....	\$0.31
Do.....	1 pint 8 ounces.....	.53
Do.....	1½ quarts.....	.69
<b>Mazola (corn)</b> .....	1 pint.....	.45
Do.....	1 quart.....	.77
Do.....	1½ quarts.....	1.05
<b>Wesson (cottonseed)</b> .....	1 pint.....	.39
Do.....	1½ pints.....	.49
Do.....	1½ quarts.....	.95
Do.....	4 quarts.....	2.28
<b>Numade (cottonseed)</b> .....	1 pint.....	.37
Do.....	1 pint 8 ounces.....	.47
Do.....	1 quart 8 ounces.....	.73
Do.....	1½ quarts.....	.99
<b>Numade (corn)</b> .....	1 pint.....	.41
Do.....	1 pint 8 ounces.....	.59
<b>Kraft (cottonseed)</b> .....	1 quart.....	.69
<b>Empress (safflower)</b> .....	1 pint 8 ounces.....	.57
<b>Planters (peanut)</b> .....	1½ pints.....	.55

Source: AFL-CIO, Department of Research.

The CHAIRMAN. Thank you very much, Mr. Doherty.

Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Do I understand, Mr. Doherty, that the examples that were given there in the paper, you consider them deceptive? Is that the point that you are making?

Mr. DOHERTY. Well, in some cases we consider the examples as precluding the consumer from making valid price per unit comparisons; yes, sir.

Mr. YOUNGER. You realize that any deceptive practice may be reached by the present law?

Mr. DOHERTY. Yes, sir.

Mr. YOUNGER. Then why do we need new law and why do we need a new department to accomplish something that can be accomplished by the existing law?

Mr. DOHERTY. Well, a deceptive practice insofar as it goes to the size and shape of the package or the labeling of the package can be handled by present law. The problem is that first of all you are assuming some kind of guilt on the part of the employer. You have the problem of publicity.

If you go to the Federal Trade Commission, for example, there are some 2,500 different product lines, some 10,000 different products on the supermarket shelves. If these things are taken up under the Federal Trade Commission Act or the Food and Drug Act, if they are taken up on an ad hoc basis, there won't be any regulation because regulation is virtually impossible under those circumstances. This bill does not assume any guilt on the part of the manufacturer. It permits the manufacturer and consumer groups to sit down and work out a set of standards and then they have clear guidelines as to where they are going. But in the case of the Federal Trade Commission or the Food and Drug Administration in that limited area where they can act you are assuming some kind of guilt, some kind of bad publicity that may hurt trade, and we certainly have no desire to do that.

Mr. YOUNGER. Well, that is accomplished already. I mean it is like the automobile. You accomplished that just by trying to get the people to believe that the automobile is a death trap now. The more testimony like yours we have here the more we are convincing people that an awful lot of deception is being practiced. The point that I am trying to make is that if deception is practiced and if it is the deception, then it is the fault of the Federal Trade Commission in not curing it and you are not going to cure it by another law and another board and another division or another bureau. They will be subject to the same human errors that the Federal Trade Commission is practicing.

Mr. DOHERTY. Well, first of all, sir, I would like to say that section 5(d) which covers the uniform weights and measures is not covered by present law. Weights and measures do not involve deception. Insofar as you are referring to deception you are talking about other sections of the bill. I can only repeat it is a very practical administrative problem, a Federal agency only has so much staff and has to take these cases on an ad hoc basis. There are trials, there are appeals, and when you multiply these by the number of items on the supermarket shelf the Federal Trade Commission can't handle it.

Mr. YOUNGER. Just a minute. Are you interpreting this law that the manufacturer has no appeal, he is just going to be dictated to by the—

Mr. DOHERTY. No, no, he can appeal under this bill. If we had our "druthers" we don't like the number of appeals that are in the bill now because we feel that two shots at the apple is too much, two bites at the apple is too much. Even if we had our "druthers," even after a regulation is issued, he has an appeal up to the Supreme Court if he wants, if these are arbitrary and capricious regulations.

Mr. YOUNGER. They are identical with the same thing that the Federal Trade Commission has now.

Mr. DOHERTY. No, the Federal Trade Commission is a little different because there they would have to file a complaint against the alleged malfessor and that, No. 1, is an undesirable feature as far as manufacturers are concerned. No. 2, the cases are on an ad hoc basis and when you consider there are 10,000 items on a supermarket shelf with some 2,000 or 3,000 product lines, you just have a horrible administrative morass and it has been impossible for the Federal Trade Commission to do anything about it or the Food and Drug.

Mr. YOUNGER. They have asked two things. One is that they would like to have the power to proceed against an entire industry where the entire industry is practicing deception and, second, that they could proceed in the case where there is a willful program of confusion. We can give them that power and that is the only two things they have asked for.

Mr. DOHERTY. We respectfully disagree with them because this bill is not designed to get after industries, it is to get after product lines and to regulate product lines which may be made by three or four industries. The thrust of this bill is simply, if you will, to reinstate the constitutional provision for a uniform system of weights and measures so that the consumer can have a frame of reference, so that when she goes to buy one product over another that she will know how much more money she is paying for quality, that is all, or for that particular brand.

Mr. YOUNGER. Thank you very much.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

Section 3 has received very little attention from any of the witnesses who have appeared before us but I notice you refer to it. In what respect to you think that section 3 improves the existing labeling requirements of the law?

Miss DRAPER. Well, under existing practices and presumably—

Mr. MACKAY. I mean law. Do you know what the law requires now?

Miss DRAPER. There is no specific provision of Federal law that governs what units shall be used on the labels on packaged products. There are some regulations under the Food and Drug Act which I could pull out and read at this point but by and large they allow a choice of ways expressing the same quantity, that is to say, you can say one and a half pints or you can call it 1 pint 8 ounces. Now this section 4(a) (3) would take away some of the alternative methods of stating quantities; it would therefore clear up some of the confusion that we have. This is the point presented in exhibit 4.

You have one and a half pints. You have 1 quart 6 ounces, 1½ pints, 1 pint 8, and so forth. If you get a little more uniform language I think the consumer would be straightened out. It would help.

Mr. MACKAY. I don't think anyone has testified against this section but it does seem to me to be a good section and a noncontroversial section of the law.

Now the rest of the bill has generated huge fears that immediately on the passage of this law the FTC and FDA are going to call everybody in the country in and regiment them.

As I read the law, nothing happens unless the promulgating authority finds that serious confusion would result from existing packaging of a particular commodity.

Now the proponents of this bill seem to me to be weak in their presentation in that few of them have brought forth any real evidence of confusion. You have presented the best exhibit that I have seen.

MISS DRAPER. Thank you.

MR. MACKAY. I still feel that the presentation of affirmative evidence of serious confusion has been extremely weak. I want to know whether you have heard from your constituency and whether the Consumers Union has heard from its constituency. We were over in Baltimore last Monday. The AFL-CIO locals there were present at a meeting and asked us to kill the bill.

MR. DOHERTY. That was the Glassblowers Union and we on an internal basis have a constant debate with them. They fear if this bill goes into effect, somehow or other it is going to cost them jobs and we feel that they are absolutely wrong. It just goes to show what a wonderful democratic labor movement we have.

MR. MACKAY. I simply point out that grassroots expression of concern about this problem in the supermarket has not been forthcoming.

MR. DOHERTY. The Machinists Union, sir, ran a poll not too long ago and they were talking about significant issues before the Congress including the truth-in-packaging bill. I don't know whether to say I am sorry to say, but it came out ahead with our members over a thing called the repeal 14(b) Taft-Hartley law, rating some 93 percent.

MR. MACKAY. We operate on the basis of our own district and so far the only suggestion of any grassroots interest in this bill has come because of calls from Washington to my district saying I needed moral support.

I make the observation that specific illustrations of serious confusion would strengthen the proponents of this bill considerably. I appreciate your providing specific illustrations.

No further questions.

THE CHAIRMAN. Mr. Nelsen.

MR. NELSEN. Thank you, Mr. Chairman.

Relative to the term "Truth in Packaging," I find that most of the letters that I get have been letters that have been stimulated by organizations and many people assumed that by virtue of the sales pitch that is given that you do not under existing law have to put on a package the content or the weight, et cetera.

In my judgment a lot of the sales pitch has been a mislabeled one so we find ourselves in a position here of being for or against truth in packaging when the truth of the matter is you must label, the weight must be there, content must be there. I find it hard to understand how this proposal will protect the shopper beyond what present law can provide.

If the Federal Trade Commission and the Food and Drug find themselves inadequately staffed to enforce present laws, they have not been screaming very loudly to us for more help. Do you know of any cases where complaints have been made and nothing has been done about it?

MR. DOHERTY. Well, I don't know of any cases before the Federal Trade Commission other than some general hearings that they have

held. Again, even if they did have the staff we have the problem that they are probably creating a political morass in that the FTC and Food and Drug do not have the regulatory power. They have a set of regulations that are agreed to and they can turn them out on a mimeograph machine for that matter.

Mr. NELSEN. Under the Federal Trade Commission authority they may set up conferences for establishment and they have done so in the past and it has worked out very well where there has been an attempt to do it.

Now, moving to another area, I notice on page 7 you suggest that "regulatory authority should be developed for covering cents off, small, medium, large, and definition of servings."

Now, is it your idea that under these standards that the authority would be granted so there must be a definite size to a medium package, a definite size to a large package, a definite size to a small package?

Mr. DOHERTY. No, sir; when we say regulation we are talking about a field of discretion that will be left with the regulatory agency. All we are saying is that whether you take the common example of the tubes of toothpaste with identical sizes, one will be the large family economy size and the other one will be the medium size. All we want to do is eliminate the confusion.

Mr. NELSEN. Are you suggesting we have the standardization of size of packages?

Mr. DOHERTY. No, sir.

Mr. NELSEN. For instance, in cereals.

Mr. DOHERTY. No, sir.

Mr. NELSEN. One item that I notice that you used as examples on your exhibit No. 3, Wheat Chex, and this was a good education for members of the committee, too, because it was a rather perplexing thing to see the two packages that were displayed. One had a pound 12 ounces, the other 14½ ounces, but we are advised by the industry that the consumer preferred a lighter textured product and therefore the same package became a lighter package. Of course this would mean you could automatically have a price increase by having less weight in the box, but on the other hand there are some witnesses who want to keep that same standard size box, but in that case you could not put the same product in because it became a lighter product. So these comparisons were sometimes a little bit confusing because here you have the old box and the new box but the new box is the box now, is it not, the old box is off the shelf as soon as inventory is gone?

Mr. DOHERTY. That is right.

Mr. NELSEN. Yes. In other words, it would be like comparing a model T to a brandnew Mercury, as far as you have changed models of automobiles. You change type of product, you change type of package, do you not?

Miss DRAPER. I don't think they changed the size of the package.

Mr. NELSEN. No, they did not. This package is the same size but the weight is on the package and it is lighter.

Miss DRAPER. They put more air in the product.

Mr. NELSEN. If the public wants a product that has more air in it, I presume the public should have the chance to make the choice.

Mr. DOHERTY. I agree with you 100 percent but I think the public should also know how much this is costing.

Mr. NELSEN. The price is on the package.

Mr. DOHERTY. Fourteen and one-half ounces of the Wheat Chex and you have some other competing brand with 13½ ounces. Because of their box sizes this does not do very much for the public in terms of money.

Mr. NELSEN. Are you suggesting the box should have been bigger?

Mr. DOHERTY. I am suggesting that the quantity designation should have been priced in such a way so that the consumer could compare prices intelligently. If this necessitates a change in the size of the box, yes, I am suggesting that the box size be changed.

Mr. NELSEN. Compare prices with what?

Mr. DOHERTY. By the way, before we get to Corn Chex, where it says 8 ounces that should be 9 ounces. That is a typographical error.

Mr. NELSEN. I am looking at the Wheat Chex box.

Mr. DOHERTY. In the case of dry cereals it is our idea that the regulatory agency could say that all dry breakfast cereals should be in the same product line and they should have uniform weights and measures.

Mr. NELSEN. Well, I still don't get your suggestion as to comparison of price.

Mr. Chairman, I think this is rather important because in my judgment this is deception. A processor has a box of Wheat Chex, they find the consumer prefers a different texture and are willing to pay for it so they change the texture of the product and put it in the same box. The weight is on the box and the price is on the box but the consumer likes it that way. Are you suggesting there is something wrong with changing a product to be more palatable to the consumer?

Mr. DOHERTY. No, sir; this bill does not have a darn thing to do with the quality of a particular product.

Mr. NELSEN. But your comparison implies there is deception because the product has been changed.

Mr. DOHERTY. We say not deception, we say confusion. When you put out a product in the 14½-ounce box, there may be another competitive 15-ounce or 11-ounce box. Then I say there is confusion and the thrust of this bill is to straighten that up, not to do anything as far as the quality of the product is concerned.

Mr. NELSEN. Then I suggest we are going to need a lot more staff than we presently have to do the job because certainly there is innovations in merchandising.

Mr. DOHERTY. Not if it is done through a regulatory statute like this one.

Mr. NELSEN. That is all.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. What you want to do, as I understand it, is make it easy for the consumer to price different packages and make sure they have the necessary information on which to base the judgment. What would be the objection, rather than just standardizing, to make them put on a label with not only the actual quantity in the package but also descriptive words which tells in distinguishable terms the actual servings in that box? For instance, if you have one box that is 11 ounces and maybe one 15 ounces, it would also have to place not only those amounts on the label but say they would have to be descriptive language such as four full cups, four servings, cups or

five half-cup servings, servings that have been determined by the Bureau of Standards, say, on what is the average measurement. What would be your reaction to that?

Mr. DOHERTY. I would have no objection to requiring that servings be designated. As a matter of fact, there is authority in this bill to do it but I don't think that goes to the central problem in the marketplace and that is this business of facilitating price comparisons.

Mr. ROGERS of Florida. If you know how many servings are in one box and you know how much are in the other, and you have the price of each one—

Mr. DOHERTY. I want to know what one box is costing me over the other box.

Mr. ROGERS of Florida. If you get more servings in one—

Miss DRAPER. I don't know which is more expensive.

Mr. ROGERS of Florida. That depends on quality, too. You are not getting the value.

Miss DRAPER. If you wanted to buy an expensive candy or if you wanted to buy a cheap candy, I think that certainly you should be able to figure out which is more expensive candy.

Mr. ROGERS of Florida. What better way than by servings?

Miss DRAPER. Well, you might have a type of candy that would serve the same number of people but one is going to be more expensive than the other.

Mr. ROGERS of Florida. You are not telling me that we cannot have different types of quality, are you?

Miss DRAPER. No. Not at all. But you ought to know which is more expensive per unit.

Mr. ROGERS of Florida. Well, won't this tell you if there are so many servings and so much more, one serving over the other?

Miss DRAPER. No. You have a pound of fudge which may serve a certain number of people, you may have a pound of gumdrops that serves the same number of people.

Mr. ROGERS of Florida. Exactly, and one is going to cost more than the other, therefore it is a different quality, I presume.

Mr. DOHERTY. What you are doing is substituting one frame of reference for another.

Mr. ROGERS of Florida. What would you be doing? You simply have the same box size.

Mr. DOHERTY. Have the pound and the measure. We are trying to reinstitute the frame of reference which we want to be the standard.

Mr. ROGERS of Florida. But you want to do it not by having put on there just per pound, you want to make them put their boxes all the same size.

Mr. DOHERTY. No, we don't want to regulate sizes of packages and we don't want to regulate quality.

Mr. ROGERS of Florida. That is not what I understood from your statement.

Mr. DOHERTY. All we want to do is regulate weights and measures.

Mr. ROGERS of Florida. Quantities.

Mr. DOHERTY. Quantities, not sizes.

Miss DRAPER. Which includes weights, depending on how they usually measure the product.



Mr. ROGERS of Florida. The greater the jumbo packaged quantities the greater the likelihood that the consumer will buy oversized containers and other optical illusions.

Now that language you presented the committee gives me the impression that you ought to regulate packages. It does not mean that?

Mr. DOHERTY. Well, if you read the language that way, sir, it is misleading but we don't want to do anything about standardizing sizes, standardizing quality.

Mr. ROGERS of Florida. Standardizing sizes you don't want to do anything about?

Mr. DOHERTY. No, sir. We refer to oversized in this statement. When we refer to oversized packages what we are referring to are deceptive sizes.

Mr. ROGERS of Florida. I don't think you are making yourself clear, as far as I am concerned, because in reading your statement you say the sizes and dimensional proportions of the boxes.

Mr. DOHERTY. This was to preclude deception, yes, but you can have brand A and the manufacturer can have any size or dimensional proportions he wants as compared to brand B, maybe bigger, smaller, different dimensional measurement as long as it is not deceptive. Then we want regulatory authority.

Mr. ROGERS of Florida. If it changes the size at all and is the same amount of a product, would it not be deceptive?

Mr. DOHERTY. Not necessarily. I think if you take the case of these instant creams, Preem puts out a little thing the size of a little pitcher, and I don't think that is deceptive, as compared to another brand that puts it out in a jar.

Now there is absolutely no relationship to sizes, no deception, and therefore no need for regulation.

Mr. ROGERS of Florida. How can you tell whether one is the better buy, different sizes?

Mr. DOHERTY. That is the purpose of this bill.

Mr. ROGERS of Florida. How would you do that?

Mr. DOHERTY. If this bill were passed I could make a price per unit comparison, reduce it to a pint or ounce and know how much I am paying for in one package as against the other.

Mr. ROGERS of Florida. Now wait, there are different sizes.

Mr. DOHERTY. Oh, no, they would have the same quantity but they are in a different shape container.

Mr. ROGERS of Florida. You are going to let one be deceptive then because one won't be filled and the other one will.

Mr. DOHERTY. Not necessarily.

Mr. ROGERS of Florida. Well, but it might.

Mr. DOHERTY. If it does, then the package which has an inordinate amount of slack fill is deceptive and would have to be changed.

Mr. ROGERS of Florida. Of course.

Mr. DOHERTY. But it does not have to conform to the other package as to whether they fill it up to the top or change it.

Mr. ROGERS of Florida. In effect you are trying to get them all in the same shape, practically.

Mr. DOHERTY. No.

Mr. ROGERS of Florida. Otherwise it is going to be deceptive, one has more fill than the other.

**Mr. DOHERTY.** Absolutely not, sir.

**Mr. ROGERS of Florida.** Well, I don't know.

**The CHAIRMAN.** Mr. Curtin.

**Mr. CURTIN.** Thank you, Mr. Chairman.

**Mr. Doherty,** I am not quite clear as to whether or not your organization is advocating standardization of packages and containers or whether it is not. Are you or are you not in favor of Government standardization of packaging?

**Miss DRAPER.** No. We are in favor of standardizing weights and quantities. This does not have to do with standardizing package sizes.

**Mr. CURTIN.** Let's look at your exhibit 4 where you list various kinds of cooking oils of the brand names and the size of the containers. Now I presume since you use this as an exhibit that you feel these various weights and sizes should be reduced in number.

**Miss DRAPER.** This was for the purpose of illustrating the purpose of the confusing use of quantity designations such as 1½ pints versus 1 pint 8 ounces.

**Mr. CURTIN.** How would you correct it?

**Miss DRAPER.** By calling them both 1½ pints or both 1 pint 8 ounces, or both 24 ounces.

**Mr. CURTIN.** A witness from Consumers Union was before us last week and he mentioned salad oils; he advocated that all salad oils should be in stated size containers as, for example, 1 pint, 1 quart, one-half gallon, and 1 gallon. He said this would correct the situation. Would you agree with that statement?

**Miss DRAPER.** Yes. We did not put the exhibit in here for that purpose but I would agree with you.

**Mr. CURTIN.** Then you would feel that having all cooking oils in containers that were either 1 pint, 1 quart, a half gallon or a gallon is preferable to the way you have it listed here?

**Miss DRAPER.** Yes.

**Mr. CURTIN.** Then you are for stabilization of packaging?

**Mr. DOHERTY.** But those containers can be shaped like judges—jugs. There is a difference between a jug and a jar. They can be shaped like jugs, they can have a wasp-waisted shape, they can have any shape that they want. We don't want to standardize the shape. What you mean by size is the shape, but if you mean the quantity when you say size, yes, we do want to standardize quantities.

**Mr. CURTIN.** Whether their bottle is shaped like a dancing lady or a squatting bird, it is still a standard size as to contents?

**Miss DRAPER.** In this case it would turn out that way because the quantity and the volume happen to coincide. You don't have the conflict between the weights and sizes that cause difficulty in other types of packages. Here fluid volume and cubic volume happen to coincide.

**Mr. CURTIN.** Then I would presume that in such things as detergents you would say all detergents should be in 1-, 2-, or 3-pound packages?

**Miss DRAPER.** We would prefer it that way. I am not sure the bill would come out with that result.

**Mr. CURTIN.** Are you still saying you are not for stabilization of packaging?

Miss DRAPER. Detergents would probably not be standardized as to weight. It takes different sizes of packages to contain the uniform weights, and there is an exemption for uniform container sizes. If the exemption does not apply, standardization of weights would result in different sizes in packages.

Mr. DOHERTY. I think this gets a little semantical. As I said before, we want to standardize quantity, not shape. If you are saying we want to standardize packaging, meaning by that standardize the quantity that goes in, yes, we do; but only insofar as the weight or measure in that package goes. As far as shape is concerned, we don't want everything to be a 4 by 4 government green.

Mr. CURTIN. Then, getting back to the cooking oils again, if you standardize them in that you say the contents of the container should be a pint, a quart, a half gallon, or a gallon, you are going to have many less types of bottles and many less sizes on the market, aren't you?

Miss DRAPER. That is true.

Mr. CURTIN. And it is going to make it much easier for the manufacturer to do that.

Mr. DOHERTY. Yes; and make it easier for the consumer to buy.

Mr. CURTIN. And employ less people to put the products in those fewer containers, isn't that true?

Mr. DOHERTY. No, sir; because I don't think this bill is going to seriously limit the packaging revolution. All it is going to do is put some order in the chaos that now exists. When the manufacturer will put out fewer quantity sizes, certainly he will have to channel his production into other lines, but then those other lines will increase, will they not?

Mr. CURTIN. Still—staying with the cooking oils—if the producer only merchandizes them in four size containers—the pint, the quart, the half gallon, and the gallon—in order to keep everybody employed, will he not have to produce new kinds of salad oils—in other words, innovate?

Mr. DOHERTY. Well, you can do that. This would be a real challenge to him. There might be a little competition back at the marketplace.

Miss DRAPER. There might be an offset by his having to produce additional different sizes for glass containers for other products. Now the density problem is not present in the salad oil but it would be in some types of glass containers.

Mr. CURTIN. Then it is your position that this standardization of packaging, as you define it, will not in any way reduce the number of employees that are employed by these various producers or manufacturers?

Miss DRAPER. We think that unlikely.

Mr. CURTIN. Have you looked into that?

Miss DRAPER. We don't know precisely what would happen on each specific product but I would in an offhand, theoretical, way think that it would be unlikely.

Mr. CURTIN. You know, of course, that the unions particularly affected by this bill feel otherwise?

Miss DRAPER. There is one union and that is the Glassblowers Association. I don't know of any other unions.

Mr. DOHERTY. As I have talked to the Glass Bottle Blowers their fear is that it is going to cut down on innovations and imaginative things they can do with glass and this kind of thing, and in that way might limit their employment. We think they are wrong on that but this is the main thrust of their argument. They have more argument as to the deceptive sizes and shapes than they do the weights and quantities.

Mr. CURTIS. You don't feel this bill will cut down on employment?

Mr. DOHERTY. No.

Mr. CURTIS. Thank you.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. I regret that I was not here when you gave your statement but I heard you say extended quantities would destroy innovation. Look at the shelves of the liquor stores at Christmas time. There you will find a tremendous number of examples of innovation in packages containing the same quantity of liquor, liquid or liquor. I think you can look at the whisky selection and the four-fifths of a gallon will be there in many sizes, shapes, and types of glass and bottles and decanters so that the ability of industry to innovate under a standard content I think is virtually limitless.

Mr. NELSEN. Would the gentleman yield?

Mr. MOSS. Yes.

Mr. NELSEN. I believe you have a bit of time.

The statement was made by the witness that it was not their intention or desire to interfere with packaging innovation as such, that you were more concerned about standard weights. Is that not true?

Mr. DOHERTY. That is right, sir.

Mr. NELSEN. Now, I notice on page 7 you say, "H.R. 15440, but not S. 985, includes an additional provision on packages of deceptive sizes, shapes, and proportions."

Now you make reference to it. Are you in support of the authority to regulate deception in packaging?

Mr. DOHERTY. Yes, sir.

Mr. NELSEN. Then you are in favor of stopping innovations, are you not?

Mr. DOHERTY. We are against deception.

Mr. NELSEN. Yes, but you said you did not wish to interfere with innovations in packaging. For example, if this dancing lady earlier referred to as a salad bottle, some salad oil might be made to look like a very large 16 ounces because of package design particularly if the bottle or container was designed with what has been referred to earlier as voluptuous design.

Mr. DOHERTY. Let me put it this way: If the dancing lady assumes some pornographic pose we would object to that going on the market.

Mr. NELSEN. But you could have the same package that looks larger, could you not?

Miss DRAPER. I think part of the thing is that if all came in the same quantities we would not worry about it at all. If they don't, there is a little more question.

Mr. NELSEN. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. One of the things I have tried to find out from the witnesses—Have you been here any time when I have been questioning?

Mr. DOHERTY. I have not. Miss Draper has, sir.

Mr. SPRINGER. She probably knows that I have been raising the question of cost at every turn.

Mr. DOHERTY. I have heard.

Mr. SPRINGER. Have you made any investigation of your own and come to any conclusions with reference to cost?

Mr. DOHERTY. Only to this extent: There was a study made by the Department of Commerce, I think this was in 1963, where it was said by Mr. Goldy that—

Mr. SPRINGER. Could you tell me who Mr. Goldy is?

Mr. DOHERTY. He is an administrator in the Department of Commerce. What is his title? Mr. Dan Goldy.

Miss DRAPER. Administrator, but we do not know of what.

Mr. DOHERTY. This thing is entitled "Comments of the Commerce Department on the Truth in Packaging."

This report says that—

Where the packaging line is set up for a large volume operation the line is specifically designed to serve the specific package. The machinery is adaptable to other packages, but the change-over may well require two or three days down time and may involve a cost of 12 to 15 thousand dollars per packaging line. This would be lessened if it were done in connection with a change which the manufacturer was planning to make in any case. The cost of adapting the package line is comparatively low per package because it is amortized over a large volume of packages.

Mr. SPRINGER. Any particular lines?

Mr. DOHERTY. I don't think he had any reference to any particular lines in his study.

Miss DRAPER. I don't think so. I think this is a generalization.

Mr. DOHERTY. Moreover, we think the manufacturer is adequately protected by the terms of the bill itself in terms of section 5(g) which provides that due regard should be given to the cost of manufacturing the packaging affected. We think there is sufficient safeguard in this section to say that the package change shall not take place if costs are excessive and that the regulation would be aborted.

Mr. SPRINGER. Do you have any information that you could give the committee with reference to those countries in which you have uniform packaging by weights?

Miss DRAPER. There was a special compilation that was prepared for the Senate committee on regulations in foreign countries which I don't happen to have with me. There is another reference and I may have it. Just a second. Here it is.

Mr. SPRINGER. Would you identify that before you read it for the record?

Miss DRAPER. This is a document entitled "Consumer Food Packaging," published by the Assembly of the State of California. It is called, A Report of the Assembly Interim Committee on Agriculture 1965.

Mr. SPRINGER. On what?

Miss DRAPER. On agriculture.

There is in this document, Appendix C: Standard Weights in British Law. The British weights and measures law requires certain foods be sold in specified quantities.

Mr. SPRINGER. In what country?

**Miss DRAPER.** This is Great Britain. It says:

Since 1926 British law has specified the quantity in which certain staple foods may be packaged. The specified quantities are two ounces or multiples of two ounces up to eight ounces, multiples of one quarter pound up to two pounds, multiples of one-half pound up to four pounds, multiples of one pound. A packager selling in Great Britain can put the staple goods on the market in any or all of the volume quantities—

and followed by a rather lengthy list.

**Mr. SPRINGER.** What is your experience on cost?

**Miss DRAPER.** It does not give the experience on cost. It does give a lengthy list of foods for which specified quantities are designated in the British law. This does not go to your question of what it cost, it just goes to the question of, Does it exist?

**Mr. SPRINGER.** There are several countries that have uniform weights per package. The only evidence that we have before this committee is Mexico as against South Africa.

Here are two countries, I assume, that are approximately the same size. Labor costs, I presume, would be approximately the same. However, the way it worked out in South Africa with Kellogg products the cost of packaging them was 51 percent more than in Mexico, and this was largely due to labor costs.

Now this is the only evidence. I have been trying to get someone to present some evidence to the contrary, that this is not going to increase costs.

**Miss DRAPER.** Well, I don't know whether this is any help. There have been some findings to the effect that we have rather an inefficient price structure in the grocery manufacturing industry because of a large amount of cost that goes into promotion, including packaging, and that this interferes with price competition and therefore keeps the prices somewhat higher than they might otherwise be.

I would like to read the pertinent portion of the report if I may. This is from the report of the National Commission on Food Marketing page 99. It says:

The substantial cost built into the price of food as a result of various forms of selling effort, advertising, sales promotion, expensive packaging, salesmen are an important form of inefficiency in the food industry.

**Skipping a little bit—**

The power of such selling efforts reduces the role of price competition and thus moderates pressures on the industry to cut costs of other functions.

It is our contention that price competition would be encouraged by this bill since it would be possible to make easier price-per-unit comparisons. Some of this additional discipline on cost and prices would be reflected in lower costs and there would not be a net increase in cost to the consumer if the bill were passed even though we had some changeovers that cost money.

**Mr. SPRINGER.** My staff has tried to keep a running account of the testimony of the people who will be faced with it. Now the best I can make out is that it would run somewhere between 2 and 6 percent the first year and then there would be a continuing cost as a result of it. If you take Campbell Soup, you have 71 lines. I don't know what you are going to do in reducing it but you are certainly going to make some substantial changes if you go to uniformity. I believe somewhere between 25 and 35 million to make the initial shift.

Mr. DOHERTY. They already have adopted standards through the Commerce Department and they would not be affected as far as we can judge on their soup lines.

Mr. SPRINGER. I think they do have some grounds for that belief. It is a matter of liquid which nobody has solved. These are just some of the things that I think we ought to think about as we approach this bill. We certainly know your being in here as an advocate of the official labor position is not going to be for any bill which is going to increase costs very much.

Miss DRAPER. May I make one more observation on your cost issue, and that is that some of these estimates seem to assume that the only packaging changes that would be made by the industry are those required by the bill. Now if the industry is busy making changes already, is it proper to attribute the cost of particular changes entirely to the bill itself? I have a report here from Advertising Age which is headed, "Half of Marketers Alter Packages in 5 Years," which gives some percentages. I sent off for the study and I was interested in the frequency with which the packages are changed and also another point that was even more interesting. It said that better than 4 out of 10 respondents, 45 percent, report their company is contemplating the purchase of new packaging machinery or equipment. Now they can, of course, in buying that packaging equipment or machinery do so with consideration as to what might be required of this bill and I think that net costs of the bill as such would be less. This study if you want the reference to that, is called "Survey of Food and Drug Packaging Recipients for Magazines for Industry, Inc., May 1965," conducted by Benson & Benson, Inc., Princeton, N.J.

Mr. SPRINGER. I want to thank you. I think you made an excellent presentation. I want to be sure we had all this on top of the table.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

I thank the witnesses for coming and giving us the benefit of their views.

I direct your attention to page 5 of the statement down next to the last paragraph in which it is stated: "It is theoretically possible for the same fluid quantity to appear as variously as  $1\frac{3}{4}$  quarts; 1 quart;  $1\frac{1}{2}$  pints; 1 quart; 1 pint 8 ounces, or 1 quart 24 ounces."

The net content of the case of liquid to the lowest common denominator that is expressed in terms of ounces, say 56 ounces rather than 1 quart, 24 ounces or  $1\frac{3}{4}$  quarts; and that sort of thing. Would that not tend to simplify?

Miss DRAPER. Yes, I would think that would help.

Mr. KORNEGAY. Is that your recommendation?

Miss DRAPER. We would support what is in the bill on this point.

Mr. KORNEGAY. Now you talk in terms of standardizing quantities which goes on to say it is a rather simple sort of thing. Mr. Moss, my good friend from California, has brought out the situation of the liquor store. For that statement, I see what it would be. I don't know, I am throwing it out. I am not an expert in this field, particularly in the case of baking cakes. Suppose you say we have 1-pound, 2-pound, and 5-pound sizes. You take a German chocolate cake which I assume has a rather heavy specific gravity or den-

sity, it might be 12 by 8 by 4, say, and you put that same weight in an angel food cake, which is light, and a housewife would have to take a wheelborrow to roll it home.

Now you have problems. I just wondered what your suggestion would be in order to get around that type of thing because a serving is a serving of cake.

MISS DRAPER. I have a little trouble with the cake example as to whether they come in the type of packages that would be regulated by this bill. I don't think I would touch cakes.

MR. DOHERTY. I think it would be impractical to regulate cakes because of the example you have given, chocolate cake as opposed to angel food. This would be an unwieldy thing. To the extent it is possible to talk in terms of regulating, we are not saying every cake has to be 1 pound, we are saying it has to come in multiples.

A 5-pound fruitcake, even the density would make it about that big, I guess [indicating]. Five pounds, as I say, in an angel food cake, the white cake, you can imagine baking that in an ordinary oven. But if we, in writing the legislation, say that they are authorized to do that kind of thing, then we have got to say we hope you put this in the bill.

I agree with him that you would not have the type of consumer confusion because of the distinct nature of each kind of cake that you mention. Even assuming that you did have some kind of indication of confusion, the regulation would be a very broad based regulation which would take into consideration everything from angel food to fruitcake and give you a broad base multiple.

MR. KORNEGAY. Let me raise another question, one that has been brought up several times, and that is with reference to servings. I have thought about that and I have asked my wife about it and I have looked at the things in the stores since we have been in the hearings. It looks like the only way to satisfactorily resolve this would be to prohibit the term "serving." For example, I have three children. Two green beans is a serving for one little girl and then the 14-year-old boy can eat a whole can and that is a serving to him. I do not know how you can accurately use that term except I can see where there is some advantage in it to the inexperienced housewife. A young bride goes to the store and starts her shopping and if she has not had much shopping experience, it is certainly a pretty rough guide as to how much a certain container will produce or how much it will serve.

MR. DOHERTY. Frankly, sir, I am not that excited about the serving provisions in the bill.

MR. KORNEGAY. People have been extremely exercised over the servings. We have heard of examples where—I have forgotten exactly where—one box that was put out 1 month had five servings and if you get the same box next month it has seven servings. Somebody has testified about that.

MR. DOHERTY. The problem with respect to servings is just what is happening in the marketplace. The reason I say I am not excited about it is because I don't think it is the duty of the Congress to protect the housewife from her own idiocy. The fact is that you do have this serving problem and maybe some regulatory agency ought to do something about it, say a can of soup. On this particular item you might say you get six servings and the poor bride has a fight with her



husband the first night because there is not enough to eat. This does tend to be deceptive and I think it is a useful provision of the bill.

Mr. KORNEGAY. The housewife buys spaghetti that says six servings and she takes it home on the farm and tries to feed six wheat threshers on it, she cannot do it. Six children, it probably would be. I don't know, very abstract.

Mr. MOSS. Will the gentleman yield?

Mr. KORNEGAY. Yes.

Mr. MOSS. I think the idea of a serving would be to make the serving in quantity, a designation of it that could be easily discernible; for instance, four cups of spaghetti or four half cups of beans or something like this so that you know exactly what amount is there, which would be good.

Mr. KORNEGAY. The question, gentlemen, I remember we got into a vile argument what a cup is. Those are some of the problems we on the committee have had and some of the others, I am sure, will look at all the aspects of this bill. It reminds me of the story of the old barbecue, the more you chew it the bigger it gets.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. DOHERTY, of course you are aware that we presently have laws to prevent misleading or deceptive advertising, which includes labeling. You are aware of that?

Mr. DOHERTY. Yes, sir.

Mr. WATSON. As I understood Mrs. Peterson and some of the other proponents of this legislation, the real thrust or purpose of this bill, is to eliminate confusion. Do you agree with that?

Mr. DOHERTY. Yes, sir.

Mr. WATSON. So we are away from the matter of truth in packaging; now we are getting down to the elimination of confusion in packaging.

Mr. DOHERTY. Sometimes confusion keeps you from getting at the truth.

Mr. WATSON. Of course. Since we have laws to prevent deceptive and misleading advertising, we are now debating the matter of elimination of confusion. I am not one to say that it is bad, but basically that is where we are right now with this bill.

Mr. DOHERTY. Yes, sir; we are trying to facilitate price per unit comparisons and eliminate the confusion.

Mr. WATSON. Now under present standards we sell a pound and a half and two and a half pounds and so forth, and I believe one of the witnesses said that has been the standard of measurement for many, many years.

Do you believe that it would be less confusing for the housewife to buy 24 ounces of a commodity rather than a pound and a half? Is that what you are contending?

Mr. DOHERTY. We are not contending that at all.

Mr. WATSON. You know this bill will not allow you to use anything fractional, so anything under 4 pounds has got to be placed in ounces.

Mr. DOHERTY. It has to be in units.

Miss DRAPER. It has to be in ounces unless it is a whole unit, such as a pound or a quart.

Mr. WATSON. But you can't have a half pound.

Miss DRAPER. No; you could not.

Mr. WATSON. Under the terms of this bill.

Miss DRAPER. No.

Mr. WATSON. We get into the confusion problem. As a practical matter, a housewife picks up an item and it has 40 ounces. Would she not immediately have a mental calculation to bring that back down to pounds in order to determine just what volume she is getting?

In other words, that would be  $2\frac{1}{2}$  pounds to help you with your calculation, because you get adjusted. If this bill passes you will not be able to buy  $2\frac{1}{2}$  pounds. Don't you think they would automatically translate the ounces back into pounds to try to make a determination of what they are getting?

Miss DRAPER. They might or might not. I think the point of this thing is to have some kind of relatively uniform statement.

Mr. WATSON. Well, pounds and half pounds, that is pretty uniform.

Miss DRAPER. But if you have pounds and half pounds and you have 8 ounces along with the half pounds, this is confusing.

Mr. WATSON. So this just eliminates the half pound and we just have the 8 ounces?

Miss DRAPER. Yes.

Mr. WATSON. And you think it would be less confusing to the housewife who has been shopping over the years to buy 40 ounces rather than  $2\frac{1}{2}$  pounds?

Miss DRAPER. Forty ounces, if she had to compare it with 40 or 24 ounces, yes.

Mr. WATSON. And you don't think they would automatically translate it back into pounds?

Miss DRAPER. Not necessarily. They might if all the other items were in terms of pounds and this one happened to turn out to be 40 ounces they might, or they might translate the pounds into ounces.

Mr. WATSON. Your position is that, although they have been thinking of pounds over the years, just because we come to ounces now they will forget about pounds?

Miss DRAPER. We have not eliminated the pound. We have eliminated the fractions of a pound.

Mr. WATSON. Is it Mrs. Draper?

Miss DRAPER. Miss.

Mr. WATSON. Miss Draper, did I understand you correctly earlier in response to a question to say that if the quantities are standard then the shapes of the container will make no difference.

Miss DRAPER. Yes.

Mr. WATSON. You believe that?

Miss DRAPER. Yes.

Mr. WATSON. I see. In other words, you would figure the best way now to meet the needs of the consumer with the greatly varying sizes of families is to standardize the size of the packages?

Miss DRAPER. In a sufficient range to take care of all types of consumers; yes.

Mr. WATSON. Of course, you are aware of the fact that the proponents of this legislation have carefully voided the use of standardization. However, you have been very pronounced in favoring standardization ultimately.

Miss DRAPER. Of weights and quantities.

Mr. WATSON. I understand that.

One final question: I don't want to appear facetious. Perhaps it might be better and easier if we standardize families and then we would have a standard package for families.

Miss DRAPER. I don't see why this would preclude a range of weights and quantities. We have got to accommodate any size of families we can reasonably suppose to exist at the present time.

Mr. WATSON. Notwithstanding the statements that have been made by many of the witnesses as to the resultant increased cost and reduction of choice, should this legislation pass you would still be in favor of this in its present form?

Miss DRAPER. I don't see why the reduction of choice is involved.

Mr. WATSON. Mrs. Peterson feels that as a result of the terrific proliferation of packages, this bill will reduce the number of packages. Do you think it will increase the choice?

Miss DRAPER. I think when people get concerned about proliferation that they are often thinking of such things as 3 pounds versus 3 pounds 1 ounce, or  $7\frac{1}{4}$  ounces versus  $7\frac{3}{8}$  ounces. It is not a matter of reducing choice.

Mr. WATSON. You take the opposite position from Mrs. Peterson. She said she thought this bill would result in a reduction in the tremendous proliferation of packages.

Do you believe that it would increase this number of packages?

Miss DRAPER. In some cases it would.

Mr. WATSON. It would?

Miss DRAPER. It would in some cases.

Mr. WATSON. So her position is that the great proliferation has caused the confusion but your position is that the greater proliferation will reduce the confusion?

Mr. DOHERTY. We don't think the proliferation of sizes per se is really relevant.

Miss DRAPER. If we reduce proliferation of weights and quantities it may increase the number of packages in some cases, and in others it may reduce the number of package sizes.

Mr. WATSON. But overall you think the passage of this bill will increase the choices to the consumer?

Miss DRAPER. I think they would be about the same.

Mr. WATSON. Pardon?

Miss DRAPER. As far as real choice is concerned, I think they would be about the same. They might change the  $6\frac{1}{2}$  and  $6\frac{3}{4}$  ounces.

Mr. WATSON. It might be interesting for you to read the testimony of Mrs. Peterson if you didn't hear it.

Miss DRAPER. I did hear it.

Mr. WATSON. Her position was that there was such a great proliferation and I was impressed—I know two big words now. She was in hopes of the fact that this would reduce or stop the great proliferation.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Doherty, I noticed in your summary statement on page 2 at the middle of the page you say:

We ask that the mandatory labeling requirements set forth in Section 4 of both bills include a directive to the administrative agencies to issue regulations against deceptive pictures and illustrations—

And the rest of the paragraph relates to cents-off economies.

Do you have any language or do you have any suggestion on the wording that would accomplish this purpose?

Mr. DOHERTY. No, sir; but we would be happy to submit that. (The information requested follows:)

AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
Washington, D.C., September 2, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, House Committee on Interstate and Foreign Commerce, U.S. House  
of Representatives, Washington, D.C.

DEAR MR. STAGGERS: In response to a request from Mr. Pickle when I appeared before your Committee on August 30, I am pleased to submit language that would amend H.R. 15440 to prohibit deceptive illustrations on packages.

We would suggest that Section 4(a) be revised to add a new paragraph (4), reading as follows:

"(4) The package in which any consumer commodity is distributed for retail sale shall bear no illustration or pictorial matter which may deceive retail purchasers in any material respect as to the contents of that package."

We hope the Committee will give favorable consideration to inclusion of this language in the bill.

Sincerely yours,

JAMES F. DOHERTY.  
Legislative Representative.

Mr. PICKLE. I wish you would submit that to the committee.

Are you saying that if we had a picture of a cherry pie that it had to have a picture that shows it had 40 cherries in it instead of 30 cherries? Would it actually have to show the 40 cherries?

Mr. DOHERTY. The number of cherries on the illustration have to correspond exactly to number of cherries in the pie?

Mr. PICKLE. Yes.

Mr. DOHERTY. I don't think you could do that. No two cherry pies are alike. I think this would go too far. Where you have a number of cherries and a bunch of corn starch on there instead I don't think you can regulate that.

Mr. PICKLE. Are you not saying this is the case?

Mr. DOHERTY. In some cases I have thought this is the case.

Mr. PICKLE. Did you say that if you had a picture of a cherry pie on the outside you didn't want to have corn shucks on the inside?

Mr. DOHERTY. No; I was referring to corn starch. I am sorry.

Mr. PICKLE. It is the strength and the right of the American advertiser to put proper labels on a package that is inherent in a free enterprise system itself.

Mr. DOHERTY. I would be in complete agreement with you as far as the right of the American advertiser to put an illustration on the package is concerned, but I would not agree with you if that illustration were not in some way related to what was inside the package.

Mr. GILLIGAN. Would the gentleman yield?

Would you limit these regulation as to regulations for packaging only or ads and media advertising on TV, newspapers, magazines and so forth, to eliminate deception?

Mr. DOHERTY. I have not given much thought to that, Congressman. I would eliminate it as far as labeling is concerned. We are just talking about the deceptive illustration on the package. I would have to give that some thought.

Mr. GILLIGAN. Suppose there was a pamphlet?

Mr. DOHERTY. Yes. Then I would consider that as part of the label.

Mr. GILLIGAN. Suppose as a sign on a shelf.

Mr. DOHERTY. A sign on a shelf.

Mr. GILLIGAN. Over the frozen food counter.

Mr. DOHERTY. That is the reason we would like regulatory power, discretionary power.

Mr. GILLIGAN. Then we are edging into control of advertising, whether it be attached to the package on the shelf or possibly eventually in newspapers or other media.

Mr. DOHERTY. I asked you whether or not it was attached to the package so as to be part of it. This is a bill to try to get rid of deceptive illustrations or deceptive packaging and it does not have anything to do with advertising.

Mr. CHAIRMAN. Mr. Carter.

Mr. CARTER. I was late getting here. I didn't get the lady's name.

Miss DRAPER. Miss Anne Draper.

Mr. CARTER. I take it you are a shopper and quite familiar with what goes on in supermarkets?

Miss DRAPER. As a matter of fact, I am not. My father does all the shopping in our family.

Mr. CARTER. Are you pretty well satisfied with the way our meats are labeled and sold in the supermarkets?

Miss DRAPER. Certainly, as far as the fresh meats are concerned, I think they are excellent. They come out usually with a price per pound or per ounce designation and I would say that meats generally are pretty good. There are some examples of irrational weights and measures, which I think I could come across if I needed to.

Mr. CARTER. You say they have pounds and ounces on the meats?

Miss DRAPER. On the fresh meats, certainly.

Mr. CARTER. On the fresh meat?

Miss DRAPER. Yes.

Mr. CARTER. I disagree with you on that point. They are labeled in pounds and decimal fractions of pounds.

Miss DRAPER. Decimal fractions of pounds; that is right.

Mr. CARTER. I agree with you it is a very good system.

How would you like for packages to be labeled in pounds and fractions of pounds as regards products on the shelves, decimal fractions rather than in ounces? Would you agree with that or not?

Miss DRAPER. I think it would be quite a shift. Eventually this might not be a bad idea.

Mr. CARTER. Yes; some people have recommended that. I don't know that that is good, saying 1 pound 8 ounces instead of 1 5/10 pounds, something of that nature. If you have the price on there, you think that is helpful, too, the price on the container? Of course, that occurs on most containers anyway.

Miss DRAPER. Yes.

Mr. CARTER. You like that idea?

Miss DRAPER. Yes.

Mr. CARTER. There are three things, as I see it. One thing, the price, of course, that is on the label. The quantity, and that is labeled, is it not?

Miss DRAPER. Yes.

Mr. CARTER. One thing which we have overlooked is the quality.

Miss DRAPER. Yes.

Mr. CARTER. In many cases that is the determining factor of the price.

Miss DRAPER. Yes.

Mr. CARTER. The quality.

Miss DRAPER. Yes.

Mr. CARTER. What are you going to do to determine the quality of it?

Miss DRAPER. We could do nothing at all.

Mr. CARTER. Do nothing at all?

Miss DRAPER. I think we would need another bill to get into a system of Government grading of consumer products. That would be a whole different area which is not involved in this bill.

Mr. DOHERTY. We said earlier, Congressman, that we don't view this bill as having anything to do with quality. The only thing this bill does is relate quantity to price. We would not want to control quality through the medium of this bill at all.

Miss DRAPER. There would have to be another bill.

Mr. CARTER. That is something I think that is vitally necessary because if you don't know something about the quality certainly the price is variable of course.

Now one witness who testified here recently stated that any product—I suppose you have a certain number of articles within the container—you should have a number on that. Do you agree with that?

Miss DRAPER. A number?

Mr. CARTER. Ma'am?

Miss DRAPER. A number?

Mr. CARTER. Yes, ma'am. A can of peaches should have a certain number of halves within it. That idea has been brought forth.

Miss DRAPER. Oh, well, it often makes sense to label it by count as they call it. I would be for that. There are some areas in which we do it by count.

Mr. CARTER. You think it makes sense, then, to have the number of peach halves in the can?

Miss DRAPER. I think that would be helpful on the peach halves; yes.

Mr. CARTER. What about the size of those, how would you govern the size? Would you have the number and size, still you don't have any idea as to quantity?

Miss DRAPER. No; you would not.

Mr. CARTER. And would you also want the number of peas in the can or the number of grains of corn?

Miss DRAPER. No.

Mr. CARTER. You would not go that far.

Now as to the size and shapes of containers, there are many numbers of shapes. You see, I go to the supermarkets and shop and I feel that any witness who testifies should be thoroughly conversant on what is on the shelves. I am afraid you are not just that conversant with those things.

The sizes and shapes of containers means a lot toward merchandizing these goods and the sizes are not to fool people, to be deceptive. I think it is some very unusual case in which that occurs. Most of the time they are to attract people, that is true, that is part of merchandising, is it not?

MISS DRAPER. I would certainly agree.

MR. CARTER. So long as we label the exact content of a container and the price there it seems to me that that is the essential part. If we have pounds and fractions of pounds and the price, then we can get a real comparability, is that not true?

MISS DRAPER. No.

MR. CARTER. You don't think so?

MISS DRAPER. No. That is to say, when they come in such a variety of weight units that you can not make a ready comparison between one package and the other, no amount of labeling will cure that particular problem.

MR. CARTER. Well, would the lady like to have it as in Russia where all packages are standardized?

MISS DRAPER. We have not suggested standardizing the packages.

MR. CARTER. I thank the lady.

Thank you, Mr. Chairman.

THE CHAIRMAN. Mr. Satterfield.

MR. SATTERFIELD. Thank you, Mr. Chairman.

I would like to direct this remark to your statement to make it clear that you favor standardization in quantity and weight of products. There has been some testimony here and I know indeed a manufacturer back in my hometown puts up certain products that are geared solely to the price at which that product sells rather than the quantity on the package.

I am referring specifically to designated 39-cent, 49-cent packages. Do you feel that this is proper or do you feel these products should be standardized as to weight rather than to price.

MR. DOHERTY. I think there is something wrong. I am assuming what you are referring to is this business where you see the candy bars that are in packages that sell 10 for 39 cents. I think there is a little element of deception there because that candy bar is a little bit smaller than the one you buy across the counter.

MR. SATTERFIELD. Where is the deception?

MR. DOHERTY. I think you are led to believe that this candy bar that sells 10 for 39 in the cellophane package is the same size candy bar that appears in the vending machine or across the counter.

MR. SATTERFIELD. Let's go to hard candies, individual pieces of candy that are geared to sell at specific prices. There has been testimony to this effect. The manufacturer makes this candy and packages it to sell for 39 cents, 49 cents, or 59 cents. He has found from experience that if he offers it for 40 or 50 or 60 cents it doesn't sell. The same thing in the dry goods, they sell a lot of things for \$1.98 instead of \$2.

MR. DOHERTY. We don't view this bill at all as regulating what he can sell his product for. If he is going to put out a candy for 39 cents or \$1.39 for that matter, it should be in a multiple of measure, in a range of multiples of measures that his competitor uses.

Mr. SATTERFIELD. Do you think this bill would guarantee he would be able to sell his product for 39 cents, or 49 cents?

Mr. DOHERTY. He has a year to sit down with his competitors and the Commerce Department and consumer and figure out a range of sizes where he can have that flexibility.

Mr. SATTERFIELD. That is a voluntary part of this bill?

Mr. DOHERTY. Yes. Even if he does not choose to sit down and regulatory authority goes in, certainly the regulation can not be arbitrarily capricious.

Mr. SATTERFIELD. These little plastic packages that you can see through that sell for 10, 15, 25 cents, they have various amounts packaged because of the different density of the candy involved.

Mr. DOHERTY. As long as they fall within the flexible or reasonable range of weights and measures for the convenience of the consumer.

Mr. SATTERFIELD. You would still stick to weight as a measure with respect to this product?

Mr. DOHERTY. Yes, sir, so that the consumer will know how much more he is paying you for the additional quantity or what he thinks in his judgment is better quality.

Mr. SATTERFIELD. Yes.

Mr. WATSON. Will the gentlemen yield?

Mr. SATTERFIELD. Yes.

Mr. WATSON. Did I understand you to say that you would like industry to sit down with his competitors and agree on sizes and prices?

Mr. DOHERTY. To sit down under the aegis of the Commerce Department with competitors or anybody that chooses to come. I think there is even provision for representatives of labor or consumers.

Mr. WATSON. But sit down and work it out within the industry as to sizes?

Mr. DOHERTY. There has to be an end to that road. There has to be, in the event they are not making progress or they cannot agree within the year.

Mr. WATSON. Of course you are aware they have antitrust laws to prohibit what you are advocating and further, it is your position that we eliminate competition between and among the industries.

Mr. DOHERTY. No, the industry is not talking anything about the competition insofar as their marketing practices are concerned. All they are talking about is establishing a uniform system of weights and measures insofar as their products are concerned. They are not talking about price, they are not talking about quality, they are not talking about marketing practices.

Mr. WATSON. Thank you, sir.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman.

We have been over this ground pretty thoroughly, I think, in the committee and it is my feeling that a lot of people sympathize rather generally with the objectives of this legislation. We are having difficulty in coming to grips with exactly what we are trying to achieve with it and whether the tools here are really those best suited to achieving this end.

Now maybe we have got a hint as to what the objective of this is on page 6 of your statement in the opening paragraph. You have re-



ferred previously to a number of practices in the marketplace which you suggest are improper. Let us say they add up to the demonstrable fact that the modern shopper is rarely able to make a truly informed choice in the marketplace. What in your opinion is a truly informed choice?

Mr. DOHERTY. A price per unit, a simply price per unit comparison between competing products in the same product line.

Mr. GILLIGAN. The price per unit would be the only elements involved in making what you refer to as a truly informed choice.

Mr. DOHERTY. The price per unit comparison.

Mr. GILLIGAN. Sir, you have not said that. You have said a truly informed choice. Now when confronted with the job of doing some marketing, what is a truly informed choice? What information is necessary to the consumer to make this truly informed choice?

Mr. DOHERTY. The context of this legislation.

Mr. GILLIGAN. No, sir, the context of your statement. What is a truly informed choice? We are trying to find out whether the legislation helps you to achieve your stated goal which is to help the consumer to a truly informed choice. Now we cannot know that until we know what you regard as a truly informed choice.

Miss DRAPER. May we refer to page 4?

Mr. GILLIGAN. Yes.

Miss DRAPER. The fourth paragraph:

The point is that in making a choice between different types of cookies, detergents, shampoos, crackers, et cetera, the shopper should be entitled to know, as a matter of basic information what the comparative prices are in relation to quantity. She may indeed prefer Brand A to Brand B for reasons of quality, efficiency or performance or other characteristics but she should know at the outset whether she is buying a more or a less expensive product in terms of quantity.

Mr. GILLIGAN. We are in agreement that price is one element.

Miss DRAPER. There are some people that want to buy the most expensive.

Mr. GILLIGAN. That is my next question. Those that constantly, shop for the greatest quantity for the lowest price are likely to fail.

In your judgment what percentage of the shoppers are concerned solely with the greatest quantity for the lowest price?

Miss DRAPER. I don't know.

Mr. GILLIGAN. Well, I think that is what none of us knows. If we don't know that, then you see I think we are in trouble in writing sweeping legislation to serve the needs of a number of people in the body politic.

Miss DRAPER. I will change my answer. I think probably the answer is 100 percent; that is to say, they want to be able to know something about quantity so that they can make a judgment.

Mr. GILLIGAN. That was not the question. The question was what percentage of the shoppers today consciously shop for the greatest quantity for the lowest price?

Miss DRAPER. Then I must again say I don't know.

Mr. GILLIGAN. I think we don't either, and I think that is where our problem stems from.

Mr. DOHERTY. I think all shoppers want to get the most for their money in terms of quantity and quality.

Mr. GILLIGAN. Quality?

Mr. DOHERTY. She should know how much quality is costing her.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. No questions.

The CHAIRMAN. We want to thank you both for appearing.

Mr. DOHERTY. Thank you.

The CHAIRMAN. The next witness is Milton I. Bennett, National Flexible Packaging Association, Cleveland, Ohio.

Mr. Bennett, we are glad to have you and we are sorry the hour is late. Proceed in whatever way you prefer.

I notice your statement is not very long. You might be able to summarize it though or read it.

#### STATEMENT OF MILTON I. BENNETT, PRESIDENT, NATIONAL FLEXIBLE PACKAGING ASSOCIATION

Mr. BENNETT. Mr. Chairman, in the interest of brevity I would like to read my statement which is relatively short, and if it is your wish, make several comments on possible questions that might be brought up because of my testimony.

Would you advise me about how much time I have?

The CHAIRMAN. Well, we hope to proceed until we get a quorum call.

Mr. BENNETT. Thank you, sir.

Mr. Chairman and members of the committee, I am Milton I. Bennett, executive vice president of Cellu-Craft Products Corp., of New Hyde Park, N.Y. I appear today on behalf of the National Flexible Packaging Association, of which I am president, to oppose the enactment of S. 985, H.R. 15440 or other packaging and labeling bills pending before this committee.

The National Flexible Packaging Association is a trade association whose 100 members are engaged in the manufacture of converted forms of paper, film, flexible plastics or foils for sale to the users of such materials for packaging purposes. (I have brought along some samples of flexible packaging. These are samples to show flexible packaging as opposed to semirigid or rigid packaging.) The association also has 45 associate members who are engaged in the manufacture of materials, equipment or supplies, or who furnish services, for use by the flexible packaging industry. The association's converter members manufacture 70 percent of the \$800 million total annual industry volume of converted flexible packaging materials. Its members include the smallest through the largest manufacturers in the industry.

The broad purposes of the association are to assemble and disseminate scientific, engineering, marketing and other information on flexible packaging materials; to cooperate with the Federal Government in the solution of packaging problems of the military and other agencies; and to advance the application and use of flexible packaging materials. The association's activities are carried on by its board of directors and committees which are comprised of officers and employees of member companies, aided by the NFPA staff.

While the association does not condone false or deceptive packaging or labeling in any form, we do oppose enactment of S. 985, H.R. 15440

or any similar bill for three reasons: (1) there is no need for such legislation; (2) such legislation would extend bureaucratic control of private industry beyond reasonable limits; and (3) such legislation would impose a severe and unfair financial burden on our industry.

The proposed packaging legislation is unnecessary because it would duplicate, for the most part, satisfactory existing laws or regulations which are in effect at the Federal and State levels. The Federal Food, Drug and Cosmetic Act prohibits the misbranding of those commodities subject to its provisions 21 U.S.C. 301. Section 403 of that act provides that a food is misbranded if, among other things, its labeling is false or misleading in any particular; it is sold under the name of another food; its container is so made, formed or filled as to be misleading; or the package fails to identify its origin or quantity in terms of weight, measure, or numerical count. Also, section 402(b)(1) of the act prohibits economic adulteration of food products through devices which lead the consumer to believe that the product is better than it, in fact, is. Similar provisions respecting the misbranding of drugs, devices, and cosmetics are contained in sections 502 and 602 respectively.

In addition, the Secretary of the Department of Health, Education, and Welfare is empowered by 21 U.S.C. 341 to establish standards of identity, quality, and reasonable standards of fill of containers whenever he determines that honesty and fair dealing in the interest of consumers will thereby be promoted.

The Federal Trade Commission Act complements the Federal Food, Drug and Cosmetic Act by providing, in sections 12 and 13, that the dissemination of any false advertisement for the purpose of inducing the purchase in commerce of food, drugs, devices, and cosmetics shall be an unfair or deceptive act or practice within the meaning of section 5.

Finally, a uniform weights and measures law for use at the State level, and uniform regulations for implementing the requirements of this law, have long existed. The National Conference on Weights and Measures, which is composed of officials at the State and local level, is sponsored by the National Bureau of Standards. The conference has dealt satisfactorily with weights and measures problems and has provided sensible rules for stating the contents of packages. These cover the placement of the information, the size of type to be used, its color prominence contrast and the descriptive language.

These broad, sweeping, all-encompassing laws guard the consumer against present and future deceptive practices, and establish an objective standard against which the industry, the courts and responsible administrative agencies may measure particular commercial practices.

Another law which insures against deceptive packaging and labeling practices is the law of survival in the marketplace, which is perhaps the most powerful corrective in this field. No manmade law can truly direct or control the millions of daily transactions triggered by the consumers' personal decisions to "buy" or "not buy." A customer may be misled once in making a purchase, but he or she will not be misled twice. Any company which relies on deception in marketing its products will not long survive.

We believe that no demonstrable need for such packaging legislation was shown during the extensive hearings in the Senate Commerce

Committee on S. 985. The rare instances of deceptive practices mentioned during those hearings could have been cured by stronger enforcement of existing law and, in any event, do not warrant imposing additional regulation on American industry. The consumer conferences sponsored by the White House last year also failed to bring forth evidence of widespread dissatisfaction with the packaging and labeling industry.

A special concern about the proposed legislation is that it would impose a severe and unjust financial penalty on the flexible packaging industry. We print most packaging materials by three basic processes: flexography, gravure, or letterpress. (I have copies here of a descriptive article on these processes for the information of the committee, or if you should choose to make it a part of the record.) The cost of preparing the plates, cylinders and electrotypes, from artwork through to the final relief or intaglio printing surface required, varies from several hundred to several thousand dollars for an average job. Precluding changes in design, copy, and size, printing plates and cylinders may be used over an extended period to produce repeat orders. Depending on the process used and the quantities printed, the use life could extend over several years, allowing the package printer to amortize his original costs.

Should S. 985, H.R. 15440, or any similar bill be enacted, many of the printing plates and cylinders now in use would become worthless. Compliance with the proposed legislation could cost the flexible packaging industry millions of dollars. This would be a crushing monetary penalty to impose on an industry that struggled to earn 2.9 percent net after taxes in 1965.

Language in the present bills would afford no protection from this penalty. Section 5(g) of S. 985 requires that "due regard" be given to the probable effect of regulations—promulgated under the act—upon "the cost of packaging of the commodities affected." The report of the Senate Committee on Commerce provides that it is intended that "no regulation under the mandatory or discretionary sections of the bill should take effect until the manufacturers involved have had full opportunity to effect any necessary packaging or labeling changes, and to allow reasonable time for the disposal of existing stocks and inventories" (Commerce Committee report, p. 5). Section 5(g) and the language I quoted from the Committee report might afford some protection to the package user, but would not protect the packaging manufacturer or converter. Any proposed legislation that would place an excessive cost burden on suppliers of converted packaging materials is both economically unwise and discriminatory.

On behalf of the membership of the National Flexible Packaging Association, I wish to extend appreciation for the opportunity to present our views to this committee.

I will be pleased in the spirit of cooperation to answer any questions to the best of my ability.

The CHAIRMAN. Thank you very kindly.

Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

Did I understand you to offer objection to section 3 of the bill, the labeling provision? No one else has offered any objection to that.

provision on the ground either that it does not add any law or there is no objection about the statement of law. The mandatory labeling provision has nothing to do with the——

Mr. BENNETT. Did I mention section 3?

Mr. MACKAY. I don't believe you did. Everybody overlooks this section and it is the only one that is mandatory.

Mr. BENNETT. Our main concern, sir, is any changes that would cause a drastic, accelerated change in copy or the size of packages.

Mr. MACKAY. I welcome any comment you may have on section 3. I would like to know if there is anything in section 3 unreasonable or inappropriate. You can do this later if you care to comment further on section 3.

No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Bennett, as I understand your position is that we presently have adequate laws to protect the consumer from deceptive or misleading advertising or anything deceptive relative to weights and sizes under present law. Is that your position?

Mr. BENNETT. That is correct, sir.

Mr. WATSON. If the consumer is being deceived, then it is because of a lack of enforcement of existing law rather than a necessity for additional law.

Mr. BENNETT. That is correct.

Mr. WATSON. Did I understand you further to say that the industry made 2.9 percent net profit last year?

Mr. BENNETT. Yes, after taxes.

Mr. WATSON. After taxes. So whether the additional cost to the industry for the implementation of this bill, should it become law, whether it be 1, 2, 30, or 50 percent, an industry that operated at 2.9 percent net profit obviously would have to pass on that cost to the consuming public?

Mr. BENNETT. I am afraid that this would happen, sir.

Mr. WATSON. I see. Thank you very much.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. No, thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Mr. Bennett, how often during the course of the year do you have labeling changes on your items like this? They change quite rapidly, don't they, as new innovations and labeling comes along?

Mr. BENNETT. Of course it varies greatly with the commodity. You do get a great many weight changes on confectionery items for example because of the tightness of profit margins and price changes in sugar and cocoa beans for chocolate.

Mr. ADAMS. So you are continually changing the set of labels as cocoa beans go up and peanuts go down and so forth during the course of the year?

Mr. BENNETT. That is very true in the confectionery field; yes, sir.

Mr. ADAMS. Actually if what happens as is set forth in the Senate report over a period of a year or two, you could adjust to without any additional cost because you have those continuing costs anyway.

Mr. BENNETT. No, this is not true, sir, because four or five colors of a design may go on for years without change, and the change may be only in the ingredient clause or the weight legend, and such changes can be made on only one color without affecting the entire design. These are usually type changes which are relatively inexpensive, except in gravure.

Mr. ADAMS. Yes, so if we require as Mr. Mackay points out, a labeling change which incidently is the only mandatory part of the bill, really then this is something that is continually going on in the industry anyway; is it not?

Mr. BENNETT. Yes, from time to time. I would like to point out, however, that the change in package design or size would be of far greater consequence than a change in ingredient copy or weight legend.

Mr. ADAMS. I agree with that. The final thing is you set forth in your statement on page 2 that this is already in existence, and you cited the various statutes. These actually go to specific commodities or to a specific line; do they not?

For example, they can say that a package of detergent in and of itself is misleading because it has said something deceptive on it; isn't that correct?

Mr. BENNETT. I would interpret it that way, yes.

Mr. ADAMS. Yes. It does not go to comparing across the board a whole industry; for example, that you would have a problem of one container being a different size and a different weight and though it might not be deceptive in and of itself when placed with four or five other containers all doing the same thing would be incapable of comparison and you could not do anything about it under the present law; could you?

Mr. BENNETT. No. I feel, in a great deal of this testimony, there is confusion between weights and quantities and value. I think most of us shop for value. I think if I may say so that there has been far too much emphasis on this point of unit comparison at the counter.

Mr. ADAMS. Actually a weight and measure system is nothing more than a manner of making comparisons; is it?

Mr. BENNETT. That is correct.

Mr. ADAMS. And the present time in the average supermarket your comparisons are made on prepackaged items for the greatest percentage of goods; isn't that correct?

Mr. BENNETT. Yes, sir, that is true and the purchasing decision is made in a very, very short interval. I have heard that once arriving at a particular counter, and looking over competitive items, that a woman actually makes her purchase decision in about seven-tenths of a second.

Mr. ADAMS. Now, do you agree that at the present time we may well have a weight-and-measure problem in the supermarket simply because things are now bought packagewise rather than under the old system of weights?

Mr. BENNETT. I think consumers develop purchasing habits. I could not agree with you that there was a problem. I don't know that a problem exists.

Mr. ADAMS. I won't use the word "problem," but now consumers are required to buy on a packaging system rather than the oldtime ounces,

pounds, and so on. In other words, you cannot, for example, go in and buy detergents by having them squirt out of a container so many ounces, you have to buy what is there.

Mr. BENNETT. That is one of the purposes and advantages of packages, the preunitizing of the product.

Mr. ADAMS. I see. And you will agree, then, that this is the manner in which she has to buy?

Mr. BENNETT. That is correct.

Mr. ADAMS. So what we are talking about in this bill is whether we should take some steps without trying to punish or cause trouble to anybody to get a weight-and-measure system that is comprehensible in terms of the new packaging industry that we have in the super-market.

Mr. BENNETT. I have no objection to anything that will make it easier for the consumer to reach a purchasing decision. I have no objection to this and certainly if there are any gimmicks being used that are deceptive we are against them. However, I do feel that adequate time should be given for changes, not only to the packer, but also to the manufacturer of the packaging materials to protect him against any sudden increase in costs.

Mr. ADAMS. I would agree with that. One of the purposes of this legislation is simply to try to help speed up the process that has gone on in other industries, like the canning industry, into some of the other brandnew products so as to establish some degree of standardization in order to obtain a weight-and-measure system within each commodity.

Now that to me is the thrust of the bill. I appreciate your testimony and your frankness in indicating that you do have these changes but that you would need time if anything were being done in a particular industry in order to make your variations.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very kindly for your testimony, Mr. Bennett.

Mr. BENNETT. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness will be Miss Mary Ann Boukalis of the National Grange. We are very glad to have you.

I see your statement is very short.

Miss BOUKALIS. Yes.

The CHAIRMAN. Proceed in any way you like.

#### STATEMENT OF MARY ANN BOUKALIS, ASSISTANT TO THE LEGISLATIVE REPRESENTATIVE, NATIONAL GRANGE

Miss BOUKALIS. My name is Mary Ann Boukalis, assistant to the legislative representative of the National Grange, who was supposed to appear before you today and had an urgent unexpected commitment and could not be here.

The National Grange, for any of you who are not aware of this fact, is a national family farm fraternity dedicated to improvement of rural America. We will be starting our centennial celebration this fall. The National Grange, for many years has been interested in the accurate labeling of food in the marketplace. We recognize that neither

the best interests of producers nor consumers are served by fraudulent practices as to content, quantity, or quality of packaged food. Not the least of our efforts in this field were directed toward the passage of the Pure Food and Drug Act. In addition, the Grange has joined with other groups to promote the interests of the consuming public by the dissemination of information and the sponsorship of seminars on the subject.

We have a long history in support of this kind of legislation and I would just like to state for you—my statement will be in the record—at the 1965 annual session the delegate body of the National Grange affirmed its stand in support of truth-in-labeling laws. In the words of the delegate body, "We are particularly concerned at this time with the application of these laws to potatoes, dairy products, prepared and canned foods, and tobacco products."

The Grange has never opposed any plan to return legitimate profits to the producers or processors of commodities needed by the American people. However, in the face of reported food industry abuses in packaging and labeling, it is our feeling that the legislation before you is highly desirable and necessary. The Food and Drug Administration and the Federal Trade Commission have been unable to deal with this problem adequately.

We feel that this legislation as it has been set up would help serve as a guidepost for American processors, something for them to follow. We do not mean by this any indictment upon the industry as such.

Charges have been made that the enactment of this legislation would decrease competition and cause inflation. On the contrary, in our judgment, the opposite is more likely to result. However, in some cases, the nature of the competition would change from that of deceiving the public to an effort toward real quality improvement of the product. Since less money would be required in the development of containers with deceptive weights and shapes and more money would be directed toward real improvements, the consumer would be the benefactor, both financially and qualitatively.

In view of the brief remarks made above, and in accordance with the expressed wishes of our delegate body, the National Grange is pleased to support H.R. 15440 and urges favorable action by this distinguished committee.

Thank you.

The CHAIRMAN. How many members do you have in the Grange?

Miss BOUKALIS. We have over 600,000 members, sir, and the resolutions which are passed at the National Grange are a product of local membership. They felt that this is important enough to include in their resolutions at the national session.

The CHAIRMAN. The National Grange?

Miss BOUKALIS. That is correct, sir.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. No questions, sir.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

We want to thank Miss Boukalis.

I noticed on the first page of your statement that next to the last paragraph you say, "The Food and Drug Administration and the



Federal Trade Commission have been unable to deal with this problem adequately."

Miss BOUKALIS. Yes, sir.

Mr. WATSON. Don't you think it might be helpful if we were to give them some additional funds with which to employ additional personnel so that they really could try to enforce the existing laws? Don't you agree with that?

Miss BOUKALIS. Yes.

Mr. WATSON. That would be extremely helpful.

Miss BOUKALIS. Yes.

Mr. WATSON. Thank you, Miss Boukalis.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you. We appreciate your coming and having the benefit of the views of your organization. It is an immense organization.

Thank you.

Miss BOUKALIS. Thank you.

The CHAIRMAN. This will conclude the hearings of the committee this morning and we will resume hearings tomorrow morning at 10 o'clock.

Again I might state it is the intention of the chairman to complete these public hearings this week.

(Whereupon, at 12:18 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 31, 1966.)



## FAIR PACKAGING AND LABELING

WEDNESDAY, AUGUST 31, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We will continue our hearing on the Fair Packaging and Labeling Act.

Our first witness this morning will be Mr. Manischewitz. If you will take the chair, sir. I notice you have a prepared statement.

Mr. MANISCHEWITZ. Yes.

The CHAIRMAN. Do you want to read this or summarize it?

Mr. MANISCHEWITZ. Well, Mr. Chairman, I am submitting, as you know, a statement for the record, but in the interest of time I would like to summarize the statement in an oral presentation.

The CHAIRMAN. All right. The whole statement will be included in the record.

Mr. MANISCHEWITZ. Thank you.

The CHAIRMAN. You may proceed, sir.

### STATEMENT OF D. BERYL MANISCHEWITZ, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS; ACCOMPANIED BY DAN CANNON, POLICY EXECUTIVE, NAM MARKETING COMMITTEE

Mr. MANISCHEWITZ. I would like to introduce the gentleman as Mr. Dan Cannon, policy executive of the NAM Marketing Committee.

The CHAIRMAN. Glad to have you, too, sir.

Mr. MANISCHEWITZ. My name is D. Beryl Manischewitz. I am chairman of the board of the B. Manischewitz Co., Newark, N.J., and a member and former chairman of the Marketing Committee of the National Association of Manufacturers.

My testimony is on behalf of the latter organization, a voluntary association of enterprises accounting for some 75 percent of the Nation's manufacturing production and about the same percentage of manufacturing employment.

The NAM has long had a code of business practices. All members are urged to subscribe to it. It includes pledges that—

We will strive at all times to conduct the affairs of this company to merit public confidence in American business and industry and faith in our free competitive enterprise system \* \* \*. We will deal fairly with customers and suppliers

and extend to them the same treatment we wish to receive ourselves \* \* \*. We will compete vigorously to serve our customers and expand our business, but we will avoid unfair or unethical practices.

I cite this code simply to evidence a well-known fact—the vast majority of businessmen are as devoted to fairness and high ethical standards as any other citizens, in or out of public life.

Mr. Chairman, freedom of speech results in a profusion and diversity of opinions, among which it may be difficult to choose. Yet, we do not suppress freedom of speech.

Likewise, freedom to produce leads to a profusion and diversity of products, among which it may be difficult to choose. Yet that, of itself, is not a valid reason to suppress the freedom to produce.

However, section 5(d) of H.R. 15440 would empower the Food and Drug Administration and/or the Federal Trade Commission to make a determination that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons.

Thereupon, they could promulgate regulations fixing the only weights or quantities in which any such consumer commodity could be distributed for retail sale.

There is a critical aspect to this procedure. It does not involve, or contemplate, any finding of unfairness or deception in packaging or labeling whatsoever. Instead, section 5(d) appears designed to hamstring industry for having done so well—for having produced a great abundance of goods in direct response to consumer desires.

Mr. Chairman, we deeply believe that the advantages to the consumer resulting from the freedom of manufacturers to innovate, produce, and vigorously compete, and the very real disadvantages which would flow from rigid Federal controls over weights and quantities, vastly outweigh any difficulties arising out of an alleged inability to compare prices.

Every literate consumer is able to distinguish among high-priced, low-priced, and medium-priced products, and purchasing decisions are rarely based on splitting hundredths of cents. Purchasing decisions are influenced by price, of course, but by many other factors as well.

These other factors may include: quality, personal taste and preference, color, aroma, flavor, consistency, density, strength, efficacy for specific uses and applications, the convenience of the packaging, the convenience of the product's form, the suitability of the size of the product for the consumer unit involved, confidence in the brand name, and confidence in the particular producer.

But section 5(d) reflects a theory that the only, or the principal, basis for a purchasing decision should be price per unit comparisons. On this fallacy is erected a complicated and exceedingly burdensome regulatory structure designed to apply rigid limitations on the weights and quantities in which consumer commodities would be permitted to be sold.

I submit it is obvious that the intrusion of artificial rigidities into the manufacture and packaging of products is not only unnecessary but also will weaken and distort the dynamics of a competitive, healthy market system.

This is indeed a grave defect. It is not cured by the many "savings provisions" that regulations can be promulgated only after hearings

conducted in compliance with section 7 of the Administrative procedure Act; that any producer or distributor affected may request the Secretary of Commerce to help develop a "voluntary" product standard; and that the FDA or FTC regulations may not vary from product standards published before the agency determination or within 18 months after the filing of a request for the development of a "voluntary" product standard.

The procedure is a regulatory maze; it can serve no good purpose; it is, in fact, compulsory, not "voluntary" and it can lead only to prolonged confusion and uncertainty.

Moreover, even if a "voluntary" standard were achieved, the FDA or FTC could still impose compulsory regulations if only they conformed to the "voluntary" standard. Thus, the "voluntary" standard would become compulsory, because any deviation would contravene a regulation having the force of law.

And then, if a manufacturer had the ingenuity to develop a new package he would have to retrace the cumbersome procedure of getting both the "voluntary" standard and the compulsory regulation amended before he could place the new package before the consumer.

Consequently, the flexibility of our present system characterized by freedom to produce would be lost; the incentive to innovate would be substantially inhibited; and the resulting injury would hurt the consumer most of all.

We earnestly believe that new Federal legislation dealing with packaging and labeling is not necessary, and most certainly we feel that section 5(d) of H.R. 15440 is critically bad.

Based on a fallacious premise, it would tend to smother the incentives of our present system under an elaborate regulatory superstructure which is certain to spawn endless redtape and delay.

On pages 5, 6, and 7 of the prepared testimony, I have outlined the steps which must be followed in the development of a voluntary product standard.

It is abundantly clear that these voluntary standard procedures are extremely complex. They are technical. They are time consuming. Producers could be completely frustrated in their efforts to attain a voluntary standard, either by technical objections from the Department or by technical objections from one or more of many sources outside the Department. Either the Department or one-fourth of the Standard Review Committee could bring the whole proceeding to a halt.

And, Mr. Chairman, it is extremely important to note that even if a voluntary standard were achieved, the entire intent and spirit of the "voluntary" standard procedure could be subverted, because the regulatory agency could transform the "voluntary" standard into a mandatory regulation with legally binding effect.

Section 5(c) (3) lays siege to consumer bargains. It would authorize regulations concerning—

any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents.

This provision raises several questions. Should the Congress frown on offerings of commodities for retail sale at prices lower than the ordinary and customary retail sale prices? Should the Congress discourage offerings of price advantages because of the size of packages or the quantity of their contents? Does the Congress really want to prohibit the manufacturer from calling special price bargains to the housewife's attention?

When a manufacturer wishes to engage in vigorous price competition, does the Congress really want to prohibit him from effectively informing consumers that he is doing so?

Mr. Chairman, we in the NAM are fully in accord with the objectives of local, State, and Federal regulations protecting the consumer from false, deceptive, or misleading representations as to the price, quality, or conditions of sale of any product.

Further, we are in favor of vigorous enforcement of existing laws, already dealing with these problems.

In concluding, I have an earnest comment on modern marketing, which would be powerfully affected by the proposals before the committee.

The outstanding characteristic of modern marketing is the emphasis on efforts by the manufacturer to ascertain and satisfy the needs and wishes of the consumer. This has been an irresistible development because business life or death depends upon how well the consumers needs are met. That these needs are dynamic and ever changing is reflected in the fact that the product lines of manufacturers are in a constant flux.

Many of today's product lines did not exist only a few years ago, and many former product lines are now extinct. In addition, many products fail even to achieve mass production for nationwide markets because they do not meet the acid test of consumer acceptability.

It is frequently overlooked that a most significant link in the modern marketing chain is the purchasing agent for the retailer. This man is truly a professional in the field of purchasing consumer commodities. His skill and experience make him a formidable bargainer with the sales representative of the manufacturer. He is anxious to protect the reputation of the retailer as a purveyor of quality goods at reasonable prices with no trickery involved.

He wants to build up a steady patronage based on continuing repeat sales to customers whose good will toward the retailer is based on solid values. The function of the purchasing agent should not be ignored in your deliberations on this bill.

It is apparent that the ultimate consumers have a built-in protective mechanism working for them in the marketing system in the form of the retailer's purchasing agent and this is backed up with product testing, laboratories, buying committees, comparison shoppers, and a vast army of people whose job it is to see to it that the merchandise they buy for resale meets the highest possible standards and qualities.

It must be concluded that the central object of H.R. 15440 is not the eradication of evil in the marketplace. Rather, it seeks to subject manufacturing to a forest of regulations which, in the end, would hurt the consumers by impairing the manufacturers' flexibility and freedom to serve them.

We respectfully urge the distinguished Committee on Interstate and Foreign Commerce not to report H.R. 15440 or similar bills.

I thank you very much.

(The full statement of Mr. Manischewitz follows:)

STATEMENT ON BEHALF OF NATIONAL ASSOCIATION OF MANUFACTURERS PRESENTED BY D. BERYL MANISCHEWITZ, CHAIRMAN OF THE BOARD, THE B. MANISCHEWITZ Co.

My name is D. Beryl Manischewitz. I am Chairman of the Board of the B. Manischewitz Co., Newark, N.J., and a member and former Chairman of the Marketing Committee of the National Association of Manufacturers. My testimony is on behalf of the latter organization, a voluntary association of enterprises accounting for some 75 percent of the nation's manufacturing production and about the same percentage of manufacturing employment.

The NAM has long had a Code of Business Practices. All members are urged to subscribe to it. It includes pledges that, "We will strive at all times to conduct the affairs of this company to merit public confidence in American business and industry and faith in our free competitive enterprise system \* \* \*"; "We will deal fairly with customers and suppliers and extend to them the same treatment we wish to receive ourselves \* \* \*"; and "We will compete vigorously to serve our customers and expand our business, but we will avoid unfair or unethical practices." I cite this Code simply to evidence a well-known fact—the vast majority of businessmen are as devoted to fairness and high ethical standards as any other citizens, in or out of public life.

Mr. Chairman, freedom of speech results in a profusion and diversity of opinions, among which it may be difficult to choose. Yet we do not suppress freedom of speech.

Likewise, freedom to produce leads to a profusion and diversity of products, among which it may be difficult to choose. Yet that, of itself, is not a valid reason to suppress the freedom to produce.

However, Section 5(d) of H.R. 15440 and S. 985 would empower the Food and Drug Administration and/or the Federal Trade Commission to make a determination that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons. Thereupon, they could promulgate regulations fixing the only weights or quantities in which any such consumer commodity could be distributed for retail sale.

There is a critical aspect to this procedure. It does not involve, or contemplate, any finding of unfairness or deception in packaging or labeling whatsoever. Instead, Section 5(d) appears designed to hamstring industry for having done so well—for having produced a great abundance of goods in direct response to consumer desires.

Mr. Chairman, we deeply believe that the advantages to the consumer resulting from the freedom of manufacturers to innovate, produce and vigorously compete, and the very real disadvantages which would flow from rigid federal controls over weights and quantities, vastly outweigh any difficulties arising out of an alleged inability to compare prices.

Every literate consumer is able to distinguish among high-priced, low-priced, and medium-priced products, and purchasing decisions are rarely based on splitting hundredths of cents. Purchasing decisions are influenced by price, of course, but by many other factors as well. These other factors may include quality; personal taste and preference; color; aroma; flavor; consistency; density; strength; efficacy for specific uses and applications; the convenience of the packaging; the convenience of the product's form; the suitability of the size of the product for the consumer unit involved; confidence in the brand name; and confidence in the particular producer.

But Section 5(d) reflects a theory that the only, or the principal, basis for a purchasing decision should be price per unit comparisons. On this fallacy is erected a complicated and exceedingly burdensome regulatory structure designed to apply rigid limitations on the weights and quantities in which consumer commodities would be permitted to be sold.

It is apparent to your Committee, I am sure, that the criterion upon which the promulgating authority *must* act is unavoidably subjective. It is simply not

capable of precise ascertainment. What, exactly, might be construed as "likely to impair the ability of consumers to make price per unit comparisons?" Inescapably, the forces of competition, the physical characteristics of the product, the physical characteristics of the package, and the nature of manufacturing, packaging and distribution processes interact in ways which rarely result in a simple, facile relationship between weight and price. Suppose, for example, that an aerosol can of a handy diameter and height, equipped with nozzle and cap, can hold 12 ounces of shaving foam under pressure. Suppose also that the manufacturing and distribution costs result in a retail price of 98 cents.

It is true that the price per ounce turns out formidably—exactly 8.16667 cents—but does this really control the purchase—and, if not, does it really "impair the ability of consumers to make price per unit comparisons"?

Perhaps the objective, however, is to expect of the consumer as little mental exertion as possible. If so, the logic of mathematics would compel the conclusion that all consumer commodities should be sold in 10 ounce net weights. Then, the price per ounce would always be one-tenth of the total price, and the division could be accomplished by simply moving the decimal point one place. Thus, price per unit comparisons could be swiftly and unerringly made.

But, Mr. Chairman, it is a fact of life that we have a decimal money system; yet, we also have a *non*-decimal system of weights and quantities. Conceivably, then, under Section 5(d), a regulation could be promulgated requiring that certain consumer commodities should be sold only by metric system weights and quantities in order to facilitate price per unit comparisons. I submit it is obvious that the intrusion of artificial rigidities into the manufacture and packaging of products is not only unnecessary but also will weaken and distort the dynamics of a competitive, healthy market system.

This is indeed a grave defect. It is not cured by the many "savings provisions" that regulations can be promulgated only after hearings conducted in compliance with Section 7 of the Administrative Procedure Act; that any producer or distributor affected may request the Secretary of Commerce to help develop a "voluntary" product standard; and that the FDA or FTC regulations may not vary from product standards published before the agency determination or within 18 months after the filing of a request for the development of a "voluntary" product standard. The procedure is a regulatory maze; it can serve no good purpose; it is in fact compulsory, not "voluntary", and it can lead only to prolonged confusion and uncertainty.

The "voluntary" procedure would be subject, under Commerce Department regulations, to the action of a committee representing not only manufacturers but also distributors, users and consumers. A three-fourths vote of the Committee plus concurrence by the Department would be necessary to get a "voluntary" standard published. Thus, either the Department itself or one-fourth of its committee could block the publication of a package standard. There could be situations in which the most cooperatively disposed industry would be helpless to get a voluntary standard issued. The process could be used, therefore, to force adoption of a compulsory FDA or FTC standard, regardless of the willingness of business to cooperate.

Moreover, even if a "voluntary" standard were achieved, the FDA or FTC could still impose compulsory regulations if only they conformed to the "voluntary" standard. Thus, the "voluntary" standard would become compulsory, because any deviation would contravene a regulation having the force of law. And then, if a manufacturer had the ingenuity to develop a new package eagerly desired by the consumer, he would have to re-traverse the cumbersome procedure of getting both the "voluntary" standard and the compulsory regulation amended before he could place the new package before the consumer. Consequently, the flexibility of our present system characterized by freedom to produce would be lost; the incentive to innovate would be substantially inhibited; and the resulting injury would hurt the consumer most of all.

We earnestly believe that new Federal legislation dealing with packaging and labeling is not necessary, and most certainly we feel that Section 5(d) of H.R. 15440 and S. 985 is critically bad. Based on a fallacious premise, it would tend to smother the incentives of our present system under an elaborate regulatory superstructure which is certain to spawn endless red-tape and delay.

Section 5(d) provides for an affected producer or distributor to request the Secretary of Commerce to participate in the development of a voluntary product standard. This would be done under procedures devised by the Secretary under



Section 2 of the Act of March 3, 1901. It seems pertinent, therefore, to examine these procedures, the latest version of which was published in the Federal Register of December 10, 1965.

The proposed standard is first "subjected to an impartial technical review by an appropriate individual or agency (Government or nongovernment, but not associated with the proponent group)."

In addition, "A proposed standard may be made available for public comment and may be circulated by the Department to appropriate producers, distributors, users, consumers, and other interested groups for consideration and comments."

Then, "The proponent group, or technical committee when appropriate, will consider all comments and suggestions received by the Department as a result of any circulation, and will recommend adjustments in the proposal that are technically sound and that will secure the greatest acceptance of the standard by the industry."

After that, "The Department will establish a Standard Review Committee within a reasonable time after receiving a proposed standard as revised in light of comment. The Committee will be made up of qualified representatives of producers, distributors, and consumers or users of the product for which a standard is sought and any other appropriate general interest groups. The Committee may remain in existence for a period necessary for the final development of the standard, or for 2 years, whichever is less."

No standard may be recommended to the Department "unless it has been approved by three-quarters of all the members of the Committee."

Upon receipt of a recommended standard and accompanying written report from the Standard Review Committee, "the Department shall give appropriate public notice and distribute the recommended standard for acceptance unless (1) Upon a showing by any member of the Committee who has voted to oppose the recommended standard on the basis of an unresolved objection, the Department determines that if such objection were not resolved, the recommended standard (a) Would be contrary to the public interest, if published; (b) Would be technically inadequate; or (c) Would be inconsistent with law or established public policy. (2) The Department determines that all criteria and procedures set forth herein have not been met satisfactorily or that there is legal objection to the recommended standard."

If the Department decides to distribute the standard, then "Distribution for acceptance will be made to a list compiled by the Department, which shall be representative of producers, distributors, users, consumers, appropriate testing laboratories, and interested State and Federal agencies, and to any others upon request."

In the next step, "The Department will analyze the responses and if such analysis indicates that the recommended standard is supported by a consensus, then it will be published as a product standard by the Department. (For the purpose of these procedures, consensus means general concurrence with no substantive objection deemed valid by the Department.)"

"Prior to the printing of a product standard, the Department will appoint a Standing Committee, which may include members from the Standard Review Committee, to receive and consider proposals to revise or amend the standard in light of changing circumstances and to make appropriate recommendations to the Department."

"The membership of a Standing Committee shall have an adequate balance among producers, distributors, users and consumers, and any other important interests such as State or Federal agencies, independent testing laboratories, educational institutions, or professional organizations."

Each suggestion to revise or amend a standard "shall be referred to the Standing Committee for appropriate consideration. The processing of a suggested revision is the same as for the development of a new standard under these procedures and the Standing Committee serves the same functions as the Standard Review Committee in the process."

"A standard published by the Department under these procedures is a voluntary standard and thus by itself has no mandatory or legally-binding effect. Any person may choose to use or not to use such a standard."

It is abundantly clear that these voluntary standard procedures are extremely complex. They are technical. They are time-consuming. Producers could be completely frustrated in their efforts to attain a voluntary standard, either by technical objections from the Department or by technical objections from one or

more of many sources outside the Department. Either the Department or one-fourth of the Standard Review Committee could bring the whole proceeding to a halt.

And, Mr. Chairman, it is extremely important to note that even if a voluntary standard were achieved, the entire intent and spirit of the "voluntary" standard procedure could be subverted, because the regulatory agency could transform the "voluntary" standard into a mandatory regulation with legally-binding effect.

Moreover, the exact relationship between a voluntary standard and a regulation under Section 5(d) is in complete confusion under the bills. It is clear that the regulation may not vary from a voluntary standard previously adopted. However, Section 5(f)(1)(B) provides that no regulation may vary from a voluntary product standard published within one year after the filing of a request for its development. (The request must be filed within 60 days after determination that a regulation is necessary, and presumably the regulation is promulgated simultaneously with the determination.) What happens in the meantime? How can the regulation conform to a standard which has not yet been published? If it is intended that the regulation be suspended in the interim, why don't the bills say so? When the standard is published, does the regulation automatically conform to it, or must there be a hearing and rule-making procedure in order to amend the regulation so as to make it conform to the standard? The provisions of the bill dealing with this area are woefully deficient, and can only be characterized as leading to administrative chaos and confusion.

The same disabilities apply to the provision of Section 5(f)(1)(C) that no regulation may vary from a standard published "within such period of time (not exceeding eighteen months after the filing of such request) as the promulgating authority may deem proper upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there are presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time; \* \* \*"

Another vitally important but unanswered question is whether a regulation must conform to an *amended* standard where the amendment takes place at some time after the time periods specified in Sections 5(f)(1)(B) and (C). If it must conform, will it be automatically conformed, or must there be a hearing and a rule-making procedure in order to conform it? The bills provide no clues.

Section 4 of H.R. 15440 and S. 985 would require the FDA and FTC to establish various types of general labeling regulations which in the main we must, in full sincerity, characterize as unnecessary, undesirable, and in conflict with existing law. For example, Section 4(a)(3)(A) would have the total weight or fluid volume of relatively small commodities expressed in ounces. Existing law requires, on the other hand, that contents be declared in terms of the largest whole unit, such as 1 pound, 7 ounces; 2 quarts, 4 ounces; 3 quarts, 1 pint, 5 ounces. The result can only be confusion, a needless redesign of labels, and no discernible gain for the consumer.

Section 4(a)(3)(C) is similarly unrewarding. It would require regulations establishing type-size for quantity declarations. Type-size requirements have just been established after laborious and lengthy study by the National Conference on Weights and Measures. There is no assurance that the regulations under H.R. 15440 and S. 985 would conform to the present detailed and wholly adequate Conference regulations. The necessity for a new statutory assault on this problem, on the very heels of great progress, is hardly evident.

Section 5(c) of H.R. 15440 and S. 985 provides for FDA and FTC regulations other than those prescribed by Section 4 when found necessary either to prevent deception or to facilitate price comparisons as to any consumer commodity. Paragraph (1) of this subsection would have standards defined for characterizing the size of packages such as "small," "medium" or "large." This would appear to be an utterly barren exercise of "making a word mean what I want it to mean," and would surely interfere with future efforts to give packages meaningful designations.

In like fashion, Section 5(c)(2) would have regulators determining what constitutes a "serving" of a commodity. Now, of course, a "serving" will vary with the type of food, whether it is to be served alone or with other foods, and the age and appetite of the person eating it. Ordinarily, food editors and home economists in food company test kitchens follow the accepted cookbook pattern of one cup for a main-dish serving and one-half cup for a serving of vegetables

or pudding-type dessert. Bringing the power of the United States Government to bear on this matter of culinary judgment seems not only inappropriate and self-defeating, but also wholly unnecessary for protection of the consumer.

Then, Section 5 (c) (3) lays siege to consumer bargains. It would authorize regulations concerning "any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents."

This provision raises two questions. Should the Congress frown on offerings of commodities for retail sale at prices lower than the ordinary and customary retail sale prices? Should the Congress discourage offerings of price advantages because of the size of packages or the quantity of their contents? These are sure ways to prevent consumers from having the benefit of vigorous price competition.

For example, the manufacturer of cleansing materials for use in automatic washing machines is able to provide the housewife with a family-size machine a significant cost saving in the purchase of a very large package of cleansing material which comes equipped with a scoop for feeding the machine for each laundry load. Does the Congress really want to prohibit the manufacturer from calling such bargains to the housewife's attention?

Further, when a manufacturer wishes to engage in vigorous price competition, does the Congress really want to prohibit him from effectively informing consumers that he is doing so? This aspect of Section 5 (c) (3) has its foundation in criticisms of "cents-off" selling campaigns. Actually, this type of campaign is a most intensive form of price competition. It directly benefits those consumers who are the most seriously interested in price-shopping. It is the most assured way for the manufacturer to offer price inducements directly to consumers in order to have them try his products. When a manufacturer wishes to engage in vigorous price competition, he wants to let consumers know about it or else there is no point in his embarking upon such a campaign. Section 5 (c) (3) could prohibit him from effectively communicating price advantages to consumers. Surely the Congress cannot favor such a result.

If false or deceptive claims are made as to savings available from "cents off" offerings or purchases of extra-large quantities, protection is already available under existing Federal laws. Both the Food and Drug Administration, under Section 408 (a) of the Federal Food, Drug and Cosmetic Act, and the Federal Trade Commission, under Section 5 of the Federal Trade Commission Act, have interpreted their authority so as to encompass action against such false and deceptive claims. And I would stress here that this subsection functions without regard to deception. As presently written, these consumer bargains can be banned whether or not they are good or bad; it is an invitation to regulators to err at the expense of the buying public. Plainly, Section 5 (c) (3) is not only unnecessary but also would be anti-competitive and anti-consumer in its effect.

Section 5 (c) (4) would authorize regulations to "require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity. . ." This is an extremely broad delegation of authority. The regulations could even require statement of the percentage of various ingredients, their origin, date of production, nutritive characteristics (calories, vitamins, etc.), and countless other categories of information. Since Section 5 (c) refers to regulations containing requirements necessary "to facilitate price comparisons," there appears to be no limit to the ingredient information which might be required; certainly, no limits are stated in the bills. Consequently, extremely burdensome and complicated requirements could be imposed on the manufacturer without necessarily benefiting the consumer in any material way.

H.R. 15440 would go beyond S. 985 in the regulation of packaging inasmuch as it contains a Section 5 (c) (5) which would authorize regulation of the sizes, shapes and dimensional proportions of packages; whereas, S. 985 deals only with the fixing of net weights and volumes. This feature of H.R. 15440 would plunge the Federal Government deeply into the minutiae of the production, packaging and distribution of consumer commodities and would be highly undesirable.

Regulations under Section 4 relating to labeling would apparently apply to all commodities whether or not a need exists for such regulation for a particular

line or lines of commodities, or whether or not existing State and Federal laws and regulations already cover the subject. The extent of overlap with existing law may be seen by noting the sections of the Food, Drug, and Cosmetic Act which provide that:

1. "A food shall be deemed to be misbranded—if its labeling is false or misleading in any particular."
2. "A food shall be deemed to be misbranded \* \* \* unless it bears a label containing \* \* \* an accurate statement of the quantity of the contents \* \* \*"
3. "A food shall be deemed to be misbranded—if any word, statement, or other information required by \* \* \* this act to appear on the label \* \* \* is not prominently placed thereon with such conspicuousness \* \* \* and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."

The overlap and confusion is compounded by the fact that the provisions of the bills are not proposed as amendments to existing Federal laws, but as a separate statute. Section 11 of S. 985 provides that "Nothing contained in the Act shall be construed to repeal, invalidate, or supersede \* \* \* the Federal Food, Drug and Cosmetic Act \* \* \*". Thus, the result would be two separate laws and sets of regulations pursuant thereto applicable to the labeling of foods.

On the other hand, regulations pursuant to Sections 5 (c) and (d) would apply only to certain commodities. The question of even-handed administration arises. Which products are to be singled out for special regulation? Clearly, it is impossible to develop a special regulation for every commodity produced in this country. On the other hand, it is obvious that special regulation is to be invoked against some products. The big question is, which products? If there are any products which really need this kind of special regulation, we respectfully submit that the Congress itself should designate them rather than delegating this extremely important decision to non-elective officials.

In concluding, I have an earnest comment on modern marketing, which would be powerfully affected by the proposals before the Committee. The outstanding characteristics of modern marketing is the emphasis on efforts by the manufacturer to ascertain and satisfy the needs and wishes of the consumer. This has been an irresistible development because business life or death depends upon how well the consumer's needs are met. That these needs are dynamic and ever-changing is reflected in the fact that the product lines of manufacturers are in a constant flux. Many of today's product lines did not exist only a few years ago, and many former product lines are now extinct. In addition, many products fail even to achieve mass production for nationwide markets because they do not meet the acid test of consumer acceptability.

In this system of intensely competitive marketing, the quality of goods reaches continuously higher levels of consumer acceptance. The best values of quality, utility, convenience or esthetics are preserved as dictated by the varying tastes of the consuming public; simultaneously, the shoddy and meretricious are culled from the market as producers and sellers feel the wrath of consumers.

The facts are that competition is so intense and the consumer so much the "boss" of the market place that manufacturers cannot risk bringing new products to the market without offering solid values to the consumer that will lead to repeat orders, without which no items can commercially exist. After the manufacturer has conducted market research to determine the needs and wants of the consumer—after he has made large capital investments for the tools of production to manufacture the commodity—after he has spent large sums of money to pay the people who produce the commodity—he would surely be irrational to risk it all on a contrived advantage. The brand name is equivalent to the "signature" of a manufacturer, and he is willing to go to great lengths to protect the integrity of that "signature". No one goes to greater lengths to learn the needs and wishes of Mrs. Housewife than the manufacturer whose success or failure depends upon her confidence.

Today's goods are innovated, developed, manufactured and marketed in a variety of sizes, quantities and prices to accommodate a diverse population. This product differentiation exists because each possesses a meaningful value, utility and appeal to individual consumer tastes. Vigorous competition within the market place is assured not by price alone, but by a diversity of product values and the freedom of consumers to choose, whether it be a price or a non-price value. There is only one significant kind of competition, and that is to

satisfy the consumer's own sense of value, whatever it may be. Thus, it is unrealistic to view "price" as the sole element of value or the sole index of product comparison, or even, in some instances, the principal factor.

Mr. Chairman, we are fully in accord with the objectives of local, state and federal regulations protecting the consumer from false, deceptive or misleading representations as to the price, quality or conditions of sale of any product. Indeed, individual business firms, trade associations and industry-supported organizations have amply demonstrated responsibility to the consuming public. The work of the Better Business Bureaus throughout the country, supported by business and industry, is well known and highly effective. Consumer educational literature and programs on all aspects of purchasing and the use and care of products are available in an enormous volume from companies and business associations. Customer Relations Departments also render significant consumer services.

It is frequently overlooked that a most significant link in the modern marketing chain is the purchasing agent for the retailer. This man is truly a professional in the field of purchasing consumer commodities. His skill and experience make him a formidable bargainer with the sales representative of the manufacturer. He is anxious to protect the reputation of the retailer as a purveyor of quality goods at reasonable prices with no trickery involved. He wants to build up steady patronage based on continuing repeat sales to customers whose goodwill toward the retailer is based on solid values.

It is apparent that the ultimate consumers have a built-in protective mechanism working for them in the marketing system in the form of the retailer's purchasing agent.

To the extent that H.R. 15440 and S. 985 would deal with deception, we believe that existing laws amply cover such practices. However, H.R. 15440 and S. 985 deal very little with deception. It is noteworthy that the Declaration of Policy in Section 2 states that, "Packages and their labels should enable consumers to obtain accurate information as to the contents and should facilitate price comparisons," and suggests nothing in regard to deception in packaging or labeling.

The labeling regulations required under Section 4 would not be premised on any finding of "unfair or deceptive methods," either by the Congress or by the regulatory authorities. They would be simply mandated by Congress even though they would duplicate or contradict existing State and Federal laws and regulations.

The regulations authorized under Section 5(c) need not be based on a finding of deception because the basic determination is stated in the alternative—"necessary to prevent the deception of consumer or to facilitate price comparisons." Thus, manufacturers could be subjected to burdensome prohibitions and restraints (even though no deception had ever been practiced) on the basis of a highly subjective determination of need to facilitate price comparisons.

The regulations authorized under Section 5(d) would not be based on any determination of "unfair or deceptive methods of packaging or labeling," but upon a determination "that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons." Once again, even though no deception had been practiced, the manufacturer would be subjected to restrictive regulations on the basis of a highly subjective determination.

It must be concluded that the central object of H.R. 15440 and S. 985 is not the eradication of evil in the marketplace. Rather, it seeks to subject manufacturing to a forest of regulations which, in the end, would hurt the consumers by impairing the manufacturers' flexibility and freedom to serve them.

We respectfully urge the distinguished Committee on Interstate and Foreign Commerce not to report H.R. 15440, S. 985 or similar bills.

The CHAIRMAN. You don't see any good at all in the bill?

Mr. MANISCHEWITZ. Yes, sir; I think it has good intentions. I think these hearings will serve a very useful purpose in bringing to the attention of the members of this committee the actions, the activities, and the things that are going on in the marketing field.

The CHAIRMAN. That is what we are trying to get at, sir, and we are trying not to hurt anyone in this industry.

I would be the last to adopt any bill that is going to hurt industry but there is a problem in this land and we are trying to get at that problem. Do you think there is a problem or not?

Mr. MANISCHEWITZ. Yes, sir. I think that one of the most important things that will probably come to your minds is the fact that the agencies that are now administering the Federal Trade Commission Act and the Food and Drug Act don't have really sufficient money and sufficient staff to do the job that they are prepared and qualified to do under the existing law.

The CHAIRMAN. I agree with you on that, sir. Both of them have come here and said that their job would be much easier if they were given this bill. I am sure they don't expect to get the bill without any change but it would help them police the wrongs that are being done.

Mr. MANISCHEWITZ. Well, from my understanding it would add a superstructure to the powers they already have and I feel that if a review of their present powers and of the existing laws were undertaken simultaneously with the investigation which you are doing now it may be found that a much more simplified way of doing the job that you and we want to see done would be to strengthen their existing power. Perhaps some of the existing law needs some amendment, I don't know about that, but we would be happy, sir, to come down here and to work with you or with anyone you say, toward bringing that end about if we were so asked and we would be delighted at the opportunity to do so.

The CHAIRMAN. We have the opportunity before us right now to review that authority and that is what we intend to do.

Mr. MANISCHEWITZ. That is the good that I think is coming out of this investigation.

The CHAIRMAN. Thank you.

Mr. Nelsen.

Mr. NELSEN. I am inclined to agree that the present laws are adequate to meet any practice that goes on that is not in the public interest as far as merchandising is concerned, but I am fearful of expanding the authority of the Federal Trade Commission to the degree that they obviously wish to have and in which they are asking for rulemaking authority where they, by the standards that are set up, by this so-called voluntary committee, then the Federal Trade Commission or whoever is the authority, they determine whether or not this product that comes on the market meets these standards.

Certainly in specific terms we could never write a set of rules but it would be an arbitrary decision on the part of someone.

In turn, the enforcement authorities can charge the processor guilty until the processor proves innocence. To me this is almost putting the brakes on innovation, putting the brakes on moving in the field of merchandising in the manner we have done in the past and I am a little fearful of that. None of us are in accord that deception should occur in the marketplace but I want to say that more of the deception is in the way the retailer handles the product than in the way the manufacturer does.

I have been in a food market recently and here is a sort of semicircle of canned goods and there is a sign "4 for 98 cents." OK. It winds up that just this little narrow strip of cans down the middle are the

ones that are being sold for "4 for 98 cents" but the fringe areas are still at 47 cents each.

Now it was supposed to fool me and it did once. Now this is the retailer, this is not the manufacturer. Now, if we are going for truth in packaging and fair ethics in merchandising, it seems to me we need to go further, we should go all the way.

Now this did not bear to your testimony but yesterday time did not permit to develop further a question that I made, and for the record I want to make reference to it again and that is this item of Wheat Chex.

Now here is the old package of 1 pound 2 ounces, 35 cents, the new package, 14½ ounces, 48 cents. Now there is an implied deception by this reference in the testimony. However, in checking with the product manufacturer I found that a new process which is an aerated Wheat Chex which the public seems to prefer. It makes the product a lighter product, therefore, the package would contain only 14½ ounces. There is no slack fill, the package is full, and it required they use the same size package but the product was lighter. There is no deception here.

If we are going to have 14 ounces or 1 pound and 2 ounces we would have to have a bigger package, of course, and again there would be proliferation and the manufacturers need to have some semblance of standardization and a certain number of packages; if they went to all sorts of packages the cost would be too great.

I do think that this committee certainly wants to assist everybody in trying to get a fair practice in merchandising, but at the same time I think the chairman would agree with me it is often stated that we don't want to do things that are going to hamper industry.

I hope when they get through with the legislation there will be testimony such as yours that will call our attention to some of the things in here that might not go to the benefit of the consumer.

Now this gets to be a statement on my part rather than a question, but I do think the record needs to be filled with testimony which presents the whole picture. You may have some observations that you would like to make relative to these points that I have stated, especially as to the enforcement procedure under this bill.

Mr. MANISCHEWITZ. Well, I agree with most of what you said, Mr. Nelsen. I think you have said it very well. We certainly don't want anybody to deceive or misrepresent the products that are sold by manufacturers of consumer products.

We think that should be against the law, we think the law should be vigorously enforced. We think there are a good many such laws on the books now and that putting another one on top of them which in certain cases could conflict with the existing law would tend to confuse things.

I am hopeful that a more uniform basis could be arrived at than what would happen if this particular bill were passed as it is now or as I understand it to be now. I think your example of the changing of weights is one which is typical of the problems faced by many manufacturers and I do feel that you have stated it so well and no comment of mine needs to be made at all.

I agree with you, sir.

Mr. NELSEN. Under the Federal Trade Act we have what is known as the Division of Trade Practice Conference and Guides, in other words, interpretive rules promulgated by industry in cooperation with the Federal Trade to set up a sort of voluntary set of standards.

It is my understanding that in the past these conferences have been very productive and to a great degree have been followed by industry.

Now if something like this can be stimulated by virtue of this bill, I am sure no one would disagree that if you can work it out on a voluntary basis that this would be preferable to writing a law that might be misinterpreted and I believe that this hearing will be conducive to alerting the industry or food packaging enterprises to be very careful that there is no evidence of deception and it will certainly serve a good purpose even if no bill is passed.

Thank you.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

I am sorry I didn't get here in time to hear all of your statement but I just want to say that I appreciate your coming in and submitting your testimony on this matter.

I notice on page 3 in the last paragraph you show this per ounce business and that I understand. In trying to figure out some way to aid in price comparisons the thought occurred to me one time it might simplify it if you went on the metric system rather than the old English system of weights and measures but you know what we would get into trying to change all that.

The next thought occurred to me it might compel a manufacturer to put on each package the cost per ounce, in other words, let the manufacturer do the arithmetic for the purchaser. But then the thought occurred to me that the prices are genuinely set in this by the retailer and, therefore, that would not work.

So you run into all sorts of problems as you pointed out in your statement.

I think that is all I have, Mr. Chairman. I again thank the gentlemen for coming and giving us the benefit of their thoughts.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. I have no questions.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. No questions.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. No questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. No questions.

The CHAIRMAN. Thank you very kindly.

You have a very famous name, we hear it over television and radio quite a lot, "Manischewitz." Are you the head of the operation they have?

Mr. MANISCHEWITZ. It is part of our company; yes, sir.

The CHAIRMAN. I see. You are to be congratulated. I do not partake of it but they tell me it is all right.

Mr. MANISCHEWITZ. I will tell you, too.

The CHAIRMAN. Thank you so much for coming and taking your time to give us the benefit of your views because we know that you



came in all sincerity and gave us in your statement the views of American industry.

Thank you so much.

Mr. MANISCHEWITZ. Thank you.

The CHAIRMAN. Our next two witnesses are Helen Ridley and Dr. John A. Howard, Grocery Manufacturers of America.

We are glad to have both of you here. I see that both of you have quite extensive testimony. I wonder if you would present it for the record and summarize it? Is this possible?

**STATEMENTS OF HELEN E. RIDLEY AND DR. JOHN A. HOWARD,  
ON BEHALF OF GROCERY MANUFACTURERS OF AMERICA, INC.**

Mrs. RIDLEY. Mr. Chairman, mine is very short.

The CHAIRMAN. How about yours?

Mr. HOWARD. I shall be very happy to do so, sir.

The CHAIRMAN. We have five witnesses this morning and we have to get through today. It is a fact that we must complete these hearings by tomorrow. We will have hearings this afternoon or night and your saving time will serve the convenience of others, as you know.

Now I did receive a letter from the president of your organization saying that—

Most of the companies had presented testimony as to the effect of the proposed legislation on their companies and other companies similarly situated. Instead of restating this type of testimony GMA feels that it would be of greater assistance to the committee to present two highly qualified witnesses who will discuss the behavior habits of the consumer as they apply to this legislation.

So that this will be interesting, I am sure. The letter is from the president of Grocery Manufacturers of America, Inc.

So if you two will proceed. You say yours is very brief. Whichever one of you wants to lead off.

Mr. HOWARD. I shall be very happy to defer to the lady, both in terms of gallantry and in knowledge.

The CHAIRMAN. Proceed.

Mrs. RIDLEY. My name is Helen Ridley and I am a professional writer and consultant.

My qualifications for appearing at this hearing include the following education and professional background:

1. Graduate of Teachers College, Columbia University, B.S. degree in foods nutrition.
2. Teaching home economics in New York City school system.
3. Food and food equipment research and writing for Good Housekeeping magazine.
4. Considerable cookbook food writing. In addition to scores of magazine articles, four cookbooks written in collaboration with the late Louis Diat, executive chef of New York City Ritz-Carlton Hotel.

Specifically, I have had to study, research, and try to understand the reactions as well as the needs of our American housewives in order to write recipes that they can use and will use. A recipe must

be clear, easy to understand and follow, and always dependable as far as the results are concerned.

In the course of my experience, I have come to several conclusions with regard to what women buy, why they buy it, and what they expect from the purchases they make; and, on the other hand, why manufacturers package their merchandise in the various ways they are found in food markets; what influence changes that they make in their packages and how they determine the sizes and types of the packages in which new products are introduced.

Simply and basically expressed, "Every package has a reason."

And the reason revolves around one person, the most important one, the housewife.

What, then, do housewives want, how do they go about satisfying those wants and do they find the means of satisfying them on the market shelves?

From working with and for housewives, I have found that a woman in doing her marketing works from a plan—usually tentative in nature—of the meals she must put on her table; and they, in turn, are determined first and foremost by the likes and dislikes of her family.

She adjusts these to her budget, her cooking skills, the time she will have available for food preparation, plus the need to provide for a certain amount of variety in the dishes she provides.

Shopping for dinner, for example, usually goes something like this:

1. She selects the main protein food, meat, poultry or fish or a main dish of beans, cheese, and so forth.

2. Then the vegetable or other accompaniments that go well with the main food and that fit her family's tastes.

3. The dessert is generally selected according to the time she will have available for its preparation, such as canned fruit that needs only to be opened; or a packaged pudding that requires merely mixing with a liquid and sometimes heating; or a cake mix which adds baking time to the brief mixing process; or finally, following a recipe which requires more time-consuming measuring, mixing, whipping, and so forth, and perhaps baking.

Assuming, then, that a housewife before she buys a product is mainly concerned that her family will like it, I believe that the other factor that most concerns her is its yield; that is, how much will it make. Will there be enough for her family or will there be so much more than enough that it will be wasteful?

Now does the package give her that clue? I have selected five popular food categories as examples of how this works out in practice.

1. Cake mixes: There are usually 30-odd different packages in most markets consisting of many kinds, such as chocolate, spice, white, gold, and so forth. Now I brought several of them here. They vary in size of box and weight of contents and in price, too. But the important thing is that they all make two 8- or 9-inch round cake layers, or a 9-by 13-inch oblong cake.

Obviously, the package has given her the clue she wants, it is right on there. The variations in weight—and there are great variations, I won't read them—come about because of the kind of cake she chooses because ingredients such as chocolate, apple and spice, and so forth, just happen to make the package lighter or heavier.

2. Frostings: Here she has a choice of flavors and that is very important to her—maybe papa may not like lemon, or coconut. Here is a whole group of them.

The other important factor, yield, is there, too. The package tells her that it contains just enough for her two-layer cake or 9- by 13-inch oblong cake.

Actually, one package may be slightly larger than the others. Now this is one, the largest and lightest in weight but it is pretty obvious that the inclusion of something like chopped nuts and coconut does require a larger box and that it also justifies a higher price. She understands that.

3. Refrigerated rolls: There are up to 20 different packages in most markets. Here are some here. And, again, great variety in type—plain, buttermilk, butterflake, cinnamon, orange-raisin and so on—and also some variety in size and weight, and you can see that, too.

But what woman cares whether there are 8 ounces or a pound in the package when what she really wants to know is if there are the 14, or the 8, or the 6, rolls that will take care of her particular family. And that is in plain sight for her on every package. Eight, ten, twelve, whatever it may be.

An interesting sidelight here is in these three comparable cans each containing eight rolls so she will know what she has, yet, each weighing differently—11.7, 11.9, and 12.3 ounces. It is all related to ingredients such as raisins and nuts.

4. Canned and dried soups, bouillon cubes and granules: Here we have a bunch of those here. Again, it is yield or how many standard measuring cups of soup it takes to fill her soup bowls. So net weight of contents is of no matter to her, it is fluid cupfuls which she relates to her own dishes if those factors are given—it makes so many cupfuls.

5. Cooking and salad oils, and here it is different. Here she is concerned with how she will use it in the kitchen and consequently the amount she needs for the kind of cooking she does. If she deep-fries or uses it extensively in making something like spaghetti sauces she looks for a larger container of cooking oil. But if she only uses oil occasionally for making small amounts of salad dressing, she may only want a rather small amount.

And what she needs she judges—and I believe very wisely—by selecting a jar which contains the amount she knows she requires. Here are samples of those. This is because buying an oil is a visual thing—the oil is a finished product and she can judge how much it takes to fill her deep-fat fryer or other cooking container or use.

This is what makes it different from cake mixes. With them, all she wants to know then is if it will fill her cake pan and make an attractive cake.

Now, how does the manufacturer solve these problems of package size and package directions? Well, there is hardly a manufacturer of any consequence today who does not spend tremendous thought, time, research and money in trying to arrive at just what the consumer does want in packaging.

For example, a spice concern wants to market an all-inclusive combination of salt, pepper, bay leaf, onion, and so forth, to make a tasty meat loaf. I am just taking a very simple example.

How does it arrive at the combination of flavors and size of a package? The usual method is to survey cookbooks and find out such things as the seasonings most generally found in recipes for meat loaves and the amount, which is terribly important, of meat called for in most of the recipes. So, if it turns out that of 75 cookbooks, some 60 may require 2 pounds of ground meat and the others specify more or less, his technician makes his mixture take care of the seasoning for 2 pounds of meat, and puts that on the package recipe.

Most people who write recipes have found it wise to use the identifying terms put on market packages by food manufacturers.

As an example, in standard cookbooks such as Good Housekeeping and McCall's—and I selected these because they are the two largest selling ones, two of the largest selling ones today—you will find these expressions:

- One package vanilla gelatin dessert whip.
- One 2- or 2½-ounce envelope dessert topping mix.
- One envelope instant beef bouillon mix.
- One beef bouillon cube.
- One package white cake mix.

But, other cookbooks, the specialty books, use them, too. I will now read several recipes from two cookbooks as examples.

I am sure you know there are hundreds and hundreds of other books on the market, especially cookbooks that cater to clientele.

I could have brought a stack but I brought a few and I thought I would quote from two of them.

Now, it seemed to me since this is a Government investigation I should really start at the top so I am going to read the Pedernales chili of Mrs. Johnson, the President's wife. A teaspoon of oregano, a teaspoon of cuminseed, two teaspoons of chili powder, or more if you need it, but two cans of Rotel tomatoes.

Now she has gone to the market and bought the two cans just the same as I do, or anybody else. She knows what two cans of tomatoes make with all those other ingredients.

Salt to taste and two cups of hot water.

Or we can take salad. This calls for a package of cherry jello, a small can of crushed pineapple, a quarter cup of chopped pecans, celery, a can of whole cranberries, and a teaspoon of almond flavoring. This is Mrs. Kornegay, of North Carolina. [Laughter.]

Am I saying something wrong?

MR. KORNEGAY. What was that?

Mrs. RIDLEY. Well, I didn't realize that.

Here is a Michigan baked beans and pork chops. A pound of Michigan beans, a teaspoon of soda, a bottle of catsup, three-quarters cup of water, three teaspoons of sugar, salt, and six or eight porkchops.

Everybody knows what a bottle of catsup is, does not have to have a weight on it. That is from Mrs. Harvey, of Michigan.

Then we have an easy beef stroganoff. A pound of ground chuck, a package of dry onion soup mix, 2½ cups of water, a third of a cup of claret wine, 3 tablespoons of catsup, and a half-cup of sour cream. That is from Mrs. John Dingell, of Michigan.

Now these are the people you people know, obviously. I don't know who they are but you do.

Here is a little book "I Love To Cook." Now you would suspect in this particular book, I am sure, that most of the recipes start from scratch and go into all sorts of, you know, do it the hard way, but not at all. She says start with a mix. Mixes certainly have a place in our contemporary kitchen and have earned our warm regard and respect. There are other recipes in here which call for a definite amount of things as related to the can.

For example, creamed crab. She says crabmeat, two cans of frozen cream of shrimp soup. That is certainly a definite product. A soup can of milk. A soup can of cream. Salt and pepper, nutmeg, 2 tablespoons of sherry wine, avocado, 2 teaspoons of lemon juice.

I won't take your time for any more but I have books here if you are interested. Thank you.

Mr. JARMAN (presiding). Thank you very much, Mrs. Ridley.

If there are no questions—

Mr. Moss. I have a few questions.

Mr. JARMAN. All right.

Mr. Moss. Your testimony is most interesting but I find that I cannot agree with you on some points.

The salad oil, for example, I think that in many homes it is a measure of far more than just determining how much fat the deep fat fryer will hold, rather, how much they can buy for the limited dollar available to purchase that salad oil.

Now whether the bottle contains 4 ounces or 14 ounces or 16 ounces is of some concern. I don't think it can be readily dismissed as an association with a container back home.

I think it relates to the ability of that person to buy the food necessary to feed the family and to attempt to make the best buy.

Now in the matter of the cake mixes you are telling us that there is a standardization. There has been no effort that I know of for anyone to challenge the validity of the fact that there are differing densities in packages. I found the reading of some of the recipes very interesting.

Now, for instance, a can of tomatoes. You could create a very serious imbalance in the taste of the product if you just went on the basis of a can of tomatoes, No. 2 can of tomatoes. What size can of tomatoes? Within what range, at least, would the can of tomatoes be?

I looked on grocery shelves. We can a lot of tomatoes in my district and in cans of a variety of sizes. I don't think that many folks are going to rely solely on a can of tomatoes.

Now on the matter of the mixes which you referred to there. You had a clear relationship between the can of soup mix and that can being the measure for the other liquid so there you might want to achieve the imbalance. It is important that you know when you make these recipes where there is a packet of gelatin, whether there has been a recent reduction in the size of the packet. I think gelatin in a dessert could be fairly significant in whether or not you would get it to jell or whether it would fail to jell. So you cannot wholly rely upon these cookbooks where they were predicated upon a can of one size and in a subsequent effort to maintain price a reduction in size was made.

So these matters do have relevancy and I don't think they can be as readily dismissed as your statement states. I think there must be more consideration given. I will be glad for your comment.

Mrs. RIDLEY. Well, first off, I believe that the woman is more visually minded than we realize. I think the woman has a definite picture of her deep fat fryer and if she buys this bottle once and it only fills the utensil inadequately, the next time she is going to take another size. I think she is very visual.

Now, this has been my experience with women.

Mr. Moss. Would you conceive there are many women who don't buy for deep fat frying but buy for mixing of salad dressing and for general cooking uses and for making cakes and they don't keep a running record to determine how many cakes or how many eggs or how many other things they fried? The total service rendered by the bottle if they poured it all into the deep fat fryer is know, otherwise it is not, so that there is again a matter of relevancy to it.

Mrs. RIDLEY. I agree with you perfectly.

Mr. Moss. I don't think it can just be explained away by pouring it into a deep fat fryer and say, "My goodness, this one does not fill as fast as the one I bought last week and I won't buy it again."

The matter of 2 ounces visually in a container like some of these electric deep fat fryers is very difficult for even a visual-minded person to detect.

Mrs. RIDLEY. If she purchases, and I believe I have seen women do so, she purchases a specific utensil of that kind such as a deep fat fryer, usually her directions tell her how much oil she will need and she only has to look on the jar to see. I mean you know they are all labeled.

Mr. Moss. We are talking about people who do not have a budget that would permit them to buy a special utensil for deep fat frying.

Mrs. RIDLEY. I don't think she is going to buy this oil at all, then, if she cannot afford it. I mean, she knows that.

Mr. Moss. There is a difference between not being able to afford something and having a special utensil for just one function in the kitchen.

Mrs. RIDLEY. I think that is true.

Mr. Moss. Now I base that on some of the mail I have received. You know, there are two-way streets of communication here and I have had constituents allege that they find some of these packages very confusing and that they have difficulty in determining which is the better buy.

Mrs. RIDLEY. Well, as I say, from my experience I believe she makes her decision according to what her husband likes. If her husband does not like something that is 2 cents cheaper or the package is bigger or something, I just don't think she buys it.

Mr. Moss. I must confess when my wife goes to the store I never review the grocery tapes with her.

Mrs. RIDLEY. Well, you may not but many men will say, "I just don't like that," and she is not going to buy that again. I don't think she is. I mean, this has been my experience with women, that they are interested in satisfying and pleasing their families. After all, that is their main function in life when they are putting food on the table. That is my experience.

I also think that she is not going to buy something they don't like and I think she is going to adjust their likes to her budget and to her cooking skills and so forth.

Mr. Moss. All I would say is we are in disagreement.

Mr. JARMAN. We will hear both witnesses and then have questions addressed to either, or both, if there is no objection.

I would like to call on Dr. Howard now for his testimony.

Mr. HOWARD. Thank you, Mr. Chairman.

My name is John A. Howard. I am a professor of marketing at Columbia University Graduate School of Business.

I appreciate this opportunity to testify on behalf of the Grocery Manufacturers of America, Inc., with regard to H.R. 15440.

My particular interest in this legislation is that of an economist whose specialized field of study is that of consumer behavior.

My educational and professional qualifications are these: After working my way through college, I was graduated from the University of Illinois in 1939 and finished a master's degree in economics in 1941.

After 4½ years of military service, mostly in the Pacific, I returned to graduate work in economics—this time at Harvard University—to specialize in the public policy of industrial regulation, where I completed a master's degree in 1948.

Then I went to Oxford University in England in 1948 to begin a doctor's dissertation in British monopoly policy.

From 1948 to 1950, I taught at the University of Illinois, spending the summers at Harvard working on the dissertation, which was completed in 1952. From 1950 to 1958, I taught at the University of Chicago; from 1958 to 1963, at the University of Pittsburgh, and since 1963, at Columbia University. I was visiting professor at Stanford University in 1962.

I was commissioned by the Ford Foundation in 1960 to conduct a 2-year study of the state of knowledge in buyer behavior. The result of this study was the book "Marketing: Executive and Buyer Behavior," Columbia University Press, 1963, which I have here.

This work with the Ford Foundation led to 4 years of research with the aid of a number of assistants in developing a large, long-run program of basic investigations into consumer behavior. This culminated in a \$500,000 research program at Columbia University that I am now directing.

This is the largest project ever carried out in the United States devoted to consumer behavior. Incidentally, also by the Ford Foundation. It involves carefully observing how some 2,000 housewives in a particular city learn about a new product, how some come to buy it and others do not. These observations for each product—incidentally, we are doing a number of products, I am just describing how we are doing one. We will continue that over a 6- to 8-month period.

During this period all the housewives are paid to maintain detailed records of all purchases of this product class and related product classes. Those products that seem to be substitutable in some sense.

The extent to which they listen to relevant advertising of all kinds is being recorded. All conversations with friends about the product are noted.

This same detailed analysis will be carried out for a number of separate products over the next 3 years.

Later I will detail why this kind of information is essential. We began with the first product May 15 of this year.

Cooperating with me in the study is the Bureau of Applied Social Research at Columbia University which has done some of the world's outstanding work in psychosociological studies having to do with buying and a wide range of other kinds of human behavior.

You gentlemen may be familiar with some of its work.

Now, as the chairman suggested, I will try to paraphrase the rest of this in order to facilitate the valuable time of the committee.

Now as a result of laying a background for this half-million study that we are now engaged in, I have taken a pretty hard look. I hope, at the consequences for the consumer of the research revolution that has burgeoned since World War II. This revolution is providing the innovations in products and production processes that we see occurring in our economy. These innovations, in turn, are much of the foundation for the rapid expansion in consumer satisfaction and in the increase in gross national product that we have seen occurring in recent years.

Now to highlight the difference in point of view here, I would like to describe how in two different ways it seems to me that one might look at the problem that you gentlemen are facing.

One is to say the issues here represent simply and narrowly another instance of where an important interest of the unorganized consumer is opposed by the organized manufacturers. The issues are obviously important to the consumer because they involve her standard of living. They are not important to the manufacturer because it is just another headache to have to put up with in carrying out another public rule.

I think this is a serious oversimplification. I would like to describe it another way and that is to say that the issues here are part of a great economic force, the second industrial revolution. This revolution is the mass organized systematic application of science to the production and distribution of goods and services.

Its consequence is a massive flow of new products and modification of existing products. In the food industry, frozen foods—an immense variety of frozen vegetables, meats, pastries, TV dinners, juices, soups, breads, and so forth—and instant foods—instant coffee and now instant breakfasts—are examples.

If you will stop to think a moment of the changes of recent years in your own food habits and in the housewife's preparation of these foods, you will appreciate why it can be called a revolution, even in a single industry such as the food industry.

Now let me spell out this research revolution just a moment briefly, if I may, because I think it lays the foundation not only for this issue that your committee is facing but a number of other public policy issues involving industrial regulation in the economy.

The revolution began soon after World War II and it is still burgeoning. For example, to just illustrate the content of it from 1921 to 1940, a 40-year period, it increased only four times from 150 million a year to 500 million. In the next 20 years it skyrocketed to 13,890 million, which, according to my simple arithmetic, is about a 24-times increase.



It is expected to be about \$22 billion this year.

The source I am drawing, as you know, is a very recent one.

Now the food industry itself invests heavily but perhaps equally important, or even more, is that it is a beneficiary, is spill-over from a lot of supplying industries. This is the thing we see in technological changes, the spill-over from the supplying industries.

A specific example, of course, here, is in the packaging area where polyethylene packaging has made great strides.

Now in the food industry per se, the amount of research has gone up 60 percent in the last 4 years to indicate that the food industry, too, is directly participating in this and, therefore, we see the results of it here and in front of us this morning.

It is obviously important to the consumer because it is the source of the new products that I have mentioned, and a good way to get an estimate of this is to say that in 1965, companies estimated that 40 percent of their products were of sales not existing in 1950 and by 1969, 15 percent of their sales would be of products now in existence in 1965.

It seems to me that we can document this with a number of ways, but to oppose this kind of an economic force is sort of being like John Ludd's followers were in Britain following the first industrial revolution when he organized a group to destroy machinery, that to attempt to oppose this is in effect being in the same position.

Now as far as the implications for the consumer, I will try to paraphrase this briefly to get on to the implications that those had for public policy.

Now, obviously, we are dealing in a very complex area, and I look at this with a lot of humility after hearing Mrs. Ridley, who is more knowledgeable of what goes on in the kitchen than I am.

If you look at the current knowledge that I have, that is knowledge at a scientific level, this is the best description I can get at, it is to say it is a purchasing cycle that goes on here. That is under all of the morass of behavior that gets exerted in the market that this kind of a pattern seems to emerge: that when she first encounters a new product—and I will deal first here with the instance of where the buyer is confronted with a new product because that is more and more the typical problem that a housewife has to deal with.

It seems to me she asks herself three questions consciously and sub-consciously. One of these is, what will my husband think? And this is well documented, as I have indicated here and Mrs. Ridley had mentioned, that the husband's tastes are dominant in the housewife's purchase.

We all, as males, think this is a little exaggerated statement, I am sure, but I really don't think it is.

The second question she asks herself is: What will be the effect on my role in the home? This is something that I think you get at the heart of what goes on in housewives' purchasing in many products; not all of them, but it is very complex.

To take a simple statement by her as to why she buys can be highly misleading. I work at Columbia, for example, where we are now looking at a very radically new product. Now some housewives fear this product because it is an instant product and the meal can be gotten

in about 2 minutes. Some housewives say, "Look, my husband will be getting up and getting his breakfast, my son will be getting his breakfast at a different time, and what will be my role?" They fear this because they fear it will do away with their important role in the home, and when they feel this way it is a complex set of answers you will get from them.

Now on the other hand, some housewives say, "Well, maybe that is a possibility but the convenience is worth it."

You get still other housewives who explain, "Hurrah, a new day has arrived, I don't have to get up and get breakfast."

So you get these three ranges of opinion.

Now these differences in the way consumers respond illustrates the problems throughout buyer behavior, and that is the enormous difference. So when you talk about a group of buyers, I think one has to be awfully careful and specify what buyers under what circumstances, what income groups, social groups, and so forth.

I think that to lump these together and as implied in standardized packages which I infer is what the proponents of the bill are suggesting—and I could read a number of examples from the transcript to support this, but unless the committee requests it I shall forgo it in the interest of time.

To standardize packaging is going to result in somebody's preferences suffering, somebody's tastes suffering, somebody's needs suffering, they will not be as well served.

A third question she asks is: What will my neighbors think if I buy it? Will they consider me a more or less desirable person to know?

This is a pretty subtle question that she asked and even if you say nobody is going to see what I eat, what I buy, why worry about my neighbor? But when you stop to think when you invite your friends in, you gentlemen who enjoy a drink once in a while, remember that perhaps you buy a different brand of whisky than if it were somebody else you were inviting in.

All of us have had this experience at one time or another so I don't think you would need to document it. I just think I have probably the latest and finest study that has been done at Columbia by the gentleman from Harvard which spells this out in considerable detail.

As far as the exact social influence, that has been well documented in other areas of human behavior, not as well documented in buyer behavior as yet but that is coming.

However, it has been set forth very strongly and firmly by Professor Riesman, the distinguished Harvard sociologist, in his widely quoted book, "The Lonely Crowd."

Once a housewife has answered these three questions with a new product she is then ready to proceed to start saying what are the functional criteria? Are these going to meet it really in detail? As she buys it more and more she then begins to pay attention to price but only once she is down the road and developed a familiarity does she worry about the price because the price is irrelevant if it does not meet her needs.

Now as she still buys more she will develop a habit, the marketing people have a term for this and that is "brand loyalty" that she will focus in, zero in on a brand. She will learn to buy it and stick to it for a period of time.

Now I can document this well but one of the best examples I have here is a study done on fresh-frozen orange juice in Chicago with 16,000 purchases involved, 600 families buying that number of units. The results ran something like this: When she bought it once, there was a 33-percent chance she would buy it again; if she bought it a second time, there was a 55-percent chance she would buy it again; and after she had bought it four times, there was an 80-percent chance she would buy it again.

So it is very clear evidence of this fact of zeroing in on a particular brand, one that meets her need and the prices are reasonably in line but secondary to the quality.

Now I can give you another example of a study done on foreign students. I won't take the time to point out that Americans are so thoroughly familiar with American brands that a study sometimes just carries over past experience. Here we took a group of foreign students who had never had any exposure to American marketing, American brands, to study them with just this purpose in mind.

Do people who are completely naive about American brands respond in the same way? And the answer is clearly "Yes." They zeroed in all on one brand of rice and they stuck to it very religiously.

When you and I want to use a doctor we ask our friends, "Who is a good doctor?" And when they tell us we go to him and unless we are badly displeased he is our doctor from then on. So this tendency of zeroing in is very clear.

Now a number of points have been made about the role of product. I read these transcripts and one would think from some of the testimony that quality didn't matter, that price was a paramount issue. Well, this is simply not so and I will give you some of the best evidence that we have here.

I could document from a number of sources but the Survey Research Center at the University of Michigan, which is probably one of the most respected economic research agencies in the world, and is widely quoted for its studies on consumer intention, what they plan to do the next 6 months, which is every 6-month period.

I would not like to confuse this with the study that was introduced by the proponents of the bill to the effect by Mr. Friedman about the 33 student wives being conducted through a supermarket.

The Survey Research Center studied the purchasing key situations of 1,150 families for 2 products, large household durables and sport shirts. They wanted to get views on extreme kinds of products, durables on one hand and sport shirts on the other.

If we look on page 11 we see the results here, that in both cases as the figures will indicate that price in the case of durables, only 6 percent of the buyers indicated that that was a feature and in the case of sport shirts, only 4 percent.

Remember that these are not new products. New products we would expect considerably less attention to price.

Now to an extent there may have been new models in here which would fuzz it up a bit but by and large, these were not carefully selected new products.

Furthermore, the durables are large expensive items, \$200 and \$300.

If buyers are going to pay attention to price, you would expect them to pay attention to price on those kinds of products for really big expenditures.

We have found from a lot of evidence that any product where the price is high, the importance in their social activity or a large price are much more carefully shopped and pay attention to price and even here when this was true they did not.

Now the principle mentioned earlier that buyers stick to a brand except for two conditions. First, if there is a major change in the price the buyers will begin to look around. We are talking about large changes here, 25, 35, 50 percent, or new products get thrown into the market and upset the market.

There will be a tendency to look around rather than stick necessarily to one product.

Second, and here is a very fascinating idea that is beginning to be worked out and developed out of Europe and Russia as well as here, and that is that people, after a time, get bored, fed up with their existing brands and begin to look around. We would particularly extend this in food. So this is the end of a cycle; they start with a new product, they try a few examples of it, they look around a little for price, they zero in on a brand, they stay with the brand for a while and then they begin to get tired and begin to look around.

After looking around if they find something better they will try it; if not, they will try the old brand and the cycle starts again.

Essentially, you can say the buyers zero in a brand, quit a brand, zero in. This is the pattern that seems to exist underlying all buying behavior.

So this is a summary I would make of the purchasing cycle.

Now I would like to emphasize finally that the buyer is a very, very complex person in some products, not all products. I have indicated an example earlier, I have another example here of a study that was done at Harvard of about 2,500 families in which buyers were asked: "How important is food? How much do you talk about food?" And it was clear that food was a very much talked about item.

At the same time, if you asked them they found that they were getting more value per unit from food than any other item in the BLS price index. Now here is where we have a case of where—I think you find throughout buying—the housewife is caught in a contract. She wants to buy as well as she can for her family and get as good food as she can but she also likes hairdos, beauty treatments, clothing, and so forth. When you have this conflict you are inevitably going to get a lot of discussion and a lot of statements which you might say the housewife is terribly concerned about. She is worried about the total expenditure for the food because it is about 25 percent of the household total expenditures but not the price of a particular item except in that stage of the purchasing cycle when she begins to zero in.

Now I have described a number of characteristics of the buyer and I would like to summarize those briefly, if I may, before I go on to what I believe it means for public policy. One of these is that under very limited circumstances is she sensitive to price? She is very sensitive to quality.

The kind of the food or whatever it is that meets her need and that important determinative quality is what her friends and her husband thinks.

Third, that she avidly seeks variety for food or other items at certain stages of the purchasing cycle.

Fourth, she develops brand loyalties, a habit of purchasing that simplifies her job. Believe you me, we all develop habits. We could not exist if we didn't.

Finally, I think these characteristics have a lot of relevance for looking at the proposed legislation for what it means in terms of the welfare of the consumer.

Now the question, of course, you are asking, is what does this mean with the bill? I think the bill can be answered in general terms by saying that the legislation will have two kinds of undesirable effect and that in my opinion it will not have the desirable effects that the proponents of the legislation hope.

The two undesirable effects will be inflation and retardation of economic growth. Inflation is the immediate or short-term consequence and the deterrents of economic growth is the future or long-term consequence.

Now let me briefly deal with inflation. It seems to be generally agreed by everyone that has discussed the topic that the legislation will require the replacement of a certain amount of packaging by the manufacturers.

The advocates have not offered an estimate and I do not pretend to know what an estimate would be, that is entirely out of my realm of knowledge at the moment; but whatever that amount is, to that extent there will be inflationary consequences.

First, in the period of inflation, price increases commensurate with cost increases are usual in industry.

Second, more packaging equipment will have to be produced. This production will generate additional economy of income and economy that is already suffering from so much income in relation to available goods and services that prices are being pulled upward. Particularly under conditions of rising incomes, consumers are not sensitive, are even less sensitive to price increases than they are if their incomes are not increased.

Further, the price increases will be occurring in food because that is where your cost increases will occur because of the packaging equipment.

As I indicated earlier, consumers are concerned about the total bill for food, more so than any other single item in the BLS cost of living index.

Their confidence, however, in the value of the food, will cause them probably to be less sensitive to these price increases, individual price increases—not price increase as a whole but individual increases.

So that if the characteristic buyer is not to be sensitive to price he will contribute to inflation.

So we can say that food, because it makes up a large part of the budget, and because that item is now increasing as we noticed in the last period, the last month, that in New York 25 percent of the increase in the index was due to the increase in food alone. We can say, I think, that inflation can be a serious problem.

Now I would like to mention the long-term economies, and there are a number of aspects of economic growth that we are concerned with, and two in particular. I would like to say I have drawn heavily from here on of the study by the Brookings Institution which will be available in the autumn which is the finest study yet that I have seen done on technological change in public policy.

I was privileged to get a copy of it before it was published.

It, of course, is the source. The true economic growth is the result of consumers getting more for their dollar. Anything that prevents the consumer from getting this is retarding economic growth.

I would like to say as a technical part, unfortunately, our gross national product figures do not include one of the most important parts of the increase in wealth and that is what the consumer gets from an improved product with no increase in price. You need only look at some of these products here to indicate where gross national product is fair, the actual growth of our consumer welfare.

The second aspect of economic growth that concerns us here is the fact that as the family's income grows it must spend a larger proportion of its income or else there will be savings problems, and we will talk about that in a moment.

Now let me say something about the effect on product innovation. In my opinion, the bill has the effect that proponents suggest it will have which is the standardized packaging, that it will have a definite deterrent effect on innovation. I would like to explain why.

A consumer cannot tell you whether she wants a new product until she is confronted with it and tries it, and companies learned this the hard way in the 1950's. They tried going out and asking consumers, "Do you like this new product?" And then tooling up and producing it and then the results were catastrophic. In fact, it got to the point where 90 percent of the new products failed seriously and all of the costs involved so that we developed market research techniques which are the test markets which try to get round that.

Now the significance of that for us is that thereby the manufacturer is forced to be the initiator. He is the one who has to run the risk of this new product, he has got to try it, take it through the model stage, put it in the test market and go through all this risk and cost and see if it is going to pay off.

Now the time required for a new product to go into the test market and to be tried out and to see if it succeeds, I think is one indication of the amount of risk and cost that a manufacturer faces. At the bottom of page 19 I have listed a certain amount of data which would indicate the amount of time.

For example, 25 percent of all new products take less than 12 months; 26 percent take between 1 and 2 years; 24 percent, 2 and 3 years; 14 percent, 3 and 4 years; 6 percent, 4 and 5 years; and 5 percent, more than 5 years.

So this would give you an indication of the amount of time involved that they run the risk. This has been well documented by a recent study done by Arthur D. Little with a group from Harvard. If you take a particular product such as cold breakfast cereal, 55 months; cake mixes, 29 months; frozen dinners and specialties, 41 months.

Now you can get some idea of the amount of cost here by looking at the research and development running on particular products such

as \$122,000 average for 21 new cold cereals. Now this far understates the actual cost, however, because these figures do not include a lot of people who are on the ongoing payroll and, therefore, discharged. One of the still major costs which is not included, probably the most important one, is the executive's time in periodically taking a hard look at this new product and saying should we go or should we not, will it work or will it not?

In spite of this we still get 40 percent failure in the food industry. Companies don't like to talk about this because none of us like to admit our mistakes, but on the other hand, this is a fact, it is unavailable at the current time.

Now to require a manufacturer to go to a Government agency and request approval, I am afraid is something that will endanger him and decrease the rate of innovation.

The key point here, I would like to emphasize, is I don't think this is as clear in the transcript as it might be. It is not only the time of getting there first, ahead of your competitor—that is important but those who get there first get brand loyalty and it is more difficult then for a different manufacturer to move in.

So that is the plum, is that loyalty. That is why it is so important that the company that runs the investment risk have a payoff to give him the incentive to produce a new product.

You may say, "Well, this is fine on new products but how do we know that new products are definitely tied to packaging? What evidence do we have that, all right, if you are going to start the new product must you necessarily have a new package?" Obviously, it is not true in all cases but I have summarized on page 23 a number of sections from the transcript where this was the case, where a new product did require a new package and therefore would be in the purview of the proposed legislation which is to require approval under certain conditions.

I will roughly go through these.

Pepperidge Farms Goldfish crackers is still another example.

Campbell's effort to develop a tripe condensed soup requires a smaller package.

Nabisco's graham cereal required a 11-ounce package whereas cream of wheat required a 14-ounce package.

Cheese has been placed in an aerosol container which is a remarkably different container than normally cheese has been.

Reusable candy containers were used for marketing food and this required something different.

Polyethelene bags.

Margarine was found to be in a more attractive package in half pound instead of a pound.

I am sure a lot of evidence could be laid out.

It seems to me that the current offering does give the housewife the choice that she does want and each year the food industry has taken advantage of this in offering new products.

Now let me briefly comment on the retarded economic growth as an argument, again the legislation, if it has the effect that the proponents indicate it will have. This is particularly where I have drawn on the Brookings Institution study.

One of the serious concerns of students of economic growth is that as our incomes go up, and let us say it is estimated that in another 60 to 70 years, depending on your particular assumptions that the average family will be running \$50,000 a year. Now this is a sizable income over what it currently is but this is an estimate on a good basis.

Now if this is true, we will soon be facing the problem of getting a consumer to take the time to spend all of her money, to buy effectively, and if she does not the consequence is that as her income increases and she spends less of her income, her savings go up, and unless those savings are somehow put to work—and there is no reason to believe there will be an offsetting effect—national income will grow at a less rate than it otherwise would have.

Now a key point I would like to make here, and this has been documented by Prof. Eva Mudler at the University of Michigan, is that the new products are a major determinant of causing the consumer to expand her purchases, spending more of her total income. This will be a key source of continued economic growth, of continuing to spend a larger portion of your income. If we slow down innovations, then you will get less expenditures for consumer goods, more saving and less of an effect on economic growth, less favorable effect.

Now finally, I would like to address myself to the effect on brand comparison since it seems to me that this has been the argument that by and large has been put forward by the proponents of the bill.

If this bill is made into law, that as a consequence consumers can make better comparisons, they can buy more satisfactorily and therefore their welfare will be greater. I submit that the legislation will not have this effect.

I ask, will increased standardization necessarily increase the tendency of the consumer to make this comparison?

I would like to say, first, there is no evidence that consumers do in fact compare a large number of brands, they do not in fact make a lot of comparisons. There is evidence to the contrary.

In our work with industrial buyers, and there you think, "Look, these people are professional buyers, they would surely do a lot of shopping around." We found only in an extreme case did they get up to six or seven alternative supplies, usually it was three or four.

The Market Research Corp. of America that regularly surveys over 7,000 families over the United States, I talked to the chairman of the board and he has made it very clear that very few housewives buy more than two or three brands of any product. If they shop carefully, if they compare a lot, it seems to me it would follow that they would buy more than two or three brands; they just do not do it.

Further, there is both psychological and anthropological evidence as to why housewives do not and psychologists have found that the accuracy of judgment greatly decreases when you have more than seven stimuli out in front of you. Now these are single dimension stimuli.

Now, admittedly, a product we presume is judged by more than one stimuli but not by a great number.

When you do add additional stimuli, additional dimensions, that is, for example, they would only judge seven brands accurately if you judged them only on color or only on taste.



Now if you cover color and taste they can judge a few more but not nearly proportionate. I think the anthropologist is best when he says that psychologically speaking it seems likely that the primitive hunter and the urban technician live in worlds of approximately equal complexity and crowdedness. We have not made much progress in the last several thousand years in our ability to handle complex problems in this sense.

Now we get around it in our complex industrial society by training people in specialized areas to think just about those areas. I guess the best example we have is the controller at the airport who, as we say, keeps a lot of balls in the air. At the same time, he is highly trained to do this and he is finding that he is needing to have the computer more and more to help him do it. So the real limitation that the human has in his inability to compare large numbers really means that he does not have to compare large numbers well at all time.

Finally, those consumers who are inclined to make comparisons and calculate except at that particular stage as I mentioned in the purchasing cycle tend to be those with the larger incomes. In buying appliances, for example, many younger folks, people of higher incomes, more education, and more skilled occupations, are much more likely to compare than older people, those with lower incomes, less education, and less skilled occupations.

I suspect that by and large you are not seriously concerned about the upper middle-class in this bill. If it is true it seems to me that insofar as the bill has a beneficial effect it will help most those that you probably want to help least.

Now the only evidence I have seen for the bill on this comparison aspect that it will increase the housewife's ability to compare has been anecdotal evidence, the kind I talked to my wife or talked to a friend. The one exception is some data developed by Monroe Friedman and in no way, I would like to say, does his data contradict what I said about the consumer.

I would like to explain this a little more carefully, if I may, because I think it is important.

Now I have developed this in more detail in about six pages in the appendix but I would like to summarize it here, if I may.

Let me say that the advocate who used this study in a way that he is very careful and used almost a page to say it should not be used, and that is to infer facts from his facts anything about consumers as a whole. The study tells us absolutely nothing about what criteria consumers do use, in fact. These housewives were directed to use the price quantity relationship, not judge quantities or whatever they might.

Finally, the study does not face up to the central issue although, surprisingly, Mr. Friedman seems to think it does. The central issue is this: Does the consumer make greater errors when she is confronted with a larger number of packages? With a simple little calculation she could have gotten that from his data but it was not shown in the study.

In fact, in a number of ways the study placed the housewife in such an abnormal situation that even if they normally did use this criterion

of price and amount as to criterion of choice they would have made a lot of errors in this situation.

One of these is that they were asked to compare a far greater number of packages, they were asked to compare 24 and more. Well, you try comparing, gentlemen, 24 and more, and I think all of us will make errors. Housewives simply do not make those kinds of comparisons.

Second, the housewives worked under the pressure of time.

Third, they work under social pressure.

There is just worlds of psychological evidence which says that if you put a person under time pressure or social pressure the errors will be up very, very rapidly. For example, a man walked through the supermarket with a housewife, watched her, clocked her in terms of time with a stopwatch presumably, asked her questions. That is a pretty abnormal kind of purchasing situation. So to find errors in the kind of choice she does not normally use is not surprising.

Fourth, they bought products in this situation they did not normally buy and, therefore, knew nothing about.

Fifth, no allowance was made for the fact that many of them had brand loyalties that prompted them to buy some brands very strongly but they were not allowed to under the idea of a study. Therefore, errors could have been high.

Now let me say this final thing, let me mention something about what I would call the confusion. It seems to me that the proponents of the bill are applying an 18th-century set of ideas to a 20th-century problem, rested on two conflicts.

These two premises are, first, the fact that the housewife has adequate information to buy except in deception cases and, second, that if there is a decision they will be responsible.

It seems to me what we have done is extend this to a 20th-century problem with a new product where quality is terribly important and more difficult to judge because they have to judge it more often and, therefore, we are faced with quite a different situation.

In section 2, I will summarize this, I have described the remarkable industrial research revolution now underway and its results for new products.

Section 3, by means of the concept of consumer purchasing cyclically described how the consumer responds to these new conditions. Whether these conditions create a new problem is something that is a separate issue.

Section 4 is intended to support this statement.

What I would like to say, then, is that since it is not clear that the consumer does have a problem, I would like to urge that some delay be made until more definitive evidence can be gotten on the specific issue that you have before you.

In conclusion, I would like to say this: That it seems to me a little surprising that we are contemplating a policy here which even in Soviet Union, with all of its economic controls, has found untenable and is moving away from. One of the advocates of this legislation has said that the bill embodies the first step toward standardization. At the same time, the planning officials of the Soviet Union have offered far greater variety.

Professor Goldman, an economist and respected one, from Wellesley College, after documenting and explaining this change in social policy writes, and I quote:

It is questionable whether it is possible to have efficient, self-service and an increase in labor productivity without product differentiation and advertising.

This legislation will move us away from the variety of offerings that is now available to the consumer.

Gentlemen, I deeply appreciate the opportunity to appear before this distinguished committee and I believe that the committee can pioneer in developing a public policy to fit the new conditions created by the second industrial revolution, a policy that will enable us to garner its benefits and avoid its evils.

Thank you.

Mr. JARMAN. Thank you.

Your full statement will appear in the record.

(Mr. Howard's full statement follows:)

STATEMENT OF DR. JOHN A. HOWARD, ON BEHALF OF GROCERY MANUFACTURERS OF AMERICA, INC.

My name is John A. Howard. I am Professor of Marketing at the Columbia University Graduate School of Business.

I appreciate this opportunity to testify on behalf of the Grocery Manufacturers of America, Inc., with regard to H.R. 15440. My particular interest in this legislation is that of an economist whose specialized field of study is that of consumer behavior.

My educational and professional qualifications are these. After working my way through college, I was graduated from the University of Illinois in 1939 and finished a master's degree in economics in 1941. After 4½ years of military service, mostly in the Pacific, I returned to graduate work in economics—this time at Harvard University to specialize in the public policy of industrial regulation, where I completed a master's degree in 1948. Then I went to Oxford University in England in 1948 to begin a doctor's dissertation in British monopoly policy.

From 1948 to 1950 I taught at the University of Illinois, spending the summers at Harvard working on the dissertation, which was completed in 1952. From 1950 to 1958 I taught at the University of Chicago; from 1958 to 1963 at the University of Pittsburgh, and since 1963, at Columbia University. I was visiting professor at Stanford University in 1962.

I was commissioned by the Ford Foundation in 1960 to conduct a two-year study of the state of knowledge in buyer behavior. The result of this study was the book *Marketing: Executive and Buyer Behavior*, Columbia University Press, 1963, which I have here. This work with the Ford Foundation led to four years of research with the aid of a number of assistants in developing a large, long-run program of basic investigations into consumer behavior. This culminated in a \$500,000.00 research program at Columbia University that I am now directing. This is the largest project ever carried out in the United States devoted to consumer behavior. Incidentally also financed by the Ford Foundation. It involves carefully observing how some 2,000 housewives in a particular city learn about a new product, how some come to buy it and others do not. These observations are being continued over a 6-8 month period. During this period all the housewives are paid to maintain detailed records of all purchases of this product class and related product classes. The extent to which they listen to relevant advertising of all kinds is being recorded. All conversations with friends about the product are noted. This same detailed analysis will be carried out for a number of separate products over the next three years. We began with the first product May 15 of this year.

Cooperating with me in the study is the Bureau of Applied Social Research at Columbia University which has done some of the world's outstanding work in psychosociological studies having to do with buying and a wide range of other kinds of human behavior.

## CONSUMER BUYING AND PACKAGING LEGISLATION

## I

## INTRODUCTION

Gentlemen: As a result of studies in the Graduate School of Business at Columbia University that I am doing I have given a lot of attention to the consequences for the consumer of the research revolution that has burgeoned since World War II. This revolution is providing the innovations in products and production processes that we see occurring in our economy. These innovations, in turn, are much of the foundation for the rapid expansion in consumer satisfaction and economic growth that we have experienced in recent years.

Let me explain this to you in greater detail.

I would like to contrast two views of the issues confronting your Committee. One view is that these issues represent simply and narrowly another instance of where an important interest of the unorganized consumer is opposed by the organized manufacturers. The issues are important to the consumer because they involve her standard of living. They are not important to the manufacturer, because to him they represent only the inconvenience of having to abide by another public rule. This view is, in my opinion, a serious oversimplification.

A more constructive view and one with greater perspective is that the issues here are one piece of a great economic force, the Second Industrial Revolution. This revolution is the mass, organized, systematic application of science to the production and distribution of goods and services. Its consequence is a massive flow of new products and modification of existing products. In the food industry, frozen foods (an immense variety of frozen vegetables, meats, pastries, TV dinners, juices, soups, breads, etc.) and instant foods (instant coffee and now instant breakfasts) are examples. If you will stop to think a moment of the changes of recent years in your own food habits and in the housewife's preparation of these foods, you will appreciate why it can be called a "revolution," even in a single industry such as the food industry.

## II

## SECOND INDUSTRIAL REVOLUTION

This revolution began soon after World War II, sprang to major dimensions in the 1950's and is still burgeoning. A widely used index of the magnitude of the Second Industrial Revolution effect on industry as a whole are the estimates of industrial research expenditures. In the twenty years between 1921 and 1940 it increased from only \$150 million to \$570 million, a four-fold increase. Within the next twenty years it skyrocketed to \$13,890 million, an increase of 24 times. Each year since it has increased until this year it is \$22 billion. (Dexter M. Keezer, "The Economic Implications of Research and Development," The Third International Investment Symposium, Cambridge, Mass., July 11, 1966.)

The food industry itself invests heavily in research and development, but also it is the beneficiary of a great amount of "spillover" from the supplying industries; for example, research in the chemical industry has transformed food packaging. Further, the food industry's share of all research and development expenditures in the economy seems to be increasing sharply. A recent survey of eighteen of the large food processors indicated that from 1960 to 1964 R&D as a percent of sales increased by sixty percent. (R. D. Buzzell and R. E. M. Nourse, *Product Innovation, The Product Life Cycle, and Competitive Behavior in Selected Food Processing Industries: 1947-64*. Arthur D. Little, Inc., p. 62.)

This growth in research expenditures is important to the consumer because it has created a flood of new products and modifications of existing products with many of the new innovations requiring new packaging arrangements. In 1965 forty percent of manufacturing sales were in products not even produced in 1950 and manufacturing firms expect that in 1969 fifteen percent of their sales will be in products not even produced in 1965. (Keezer, *Ibid.*; Nelson, Peck and Kalachek, *Technological Advance, Economic Growth and Public Policy*, to be published by Brookings Institution, p. 57.)

A great variety of additional supporting data can be cited, but more important for us are the detailed implications of this enormous volume of research for the consumer.

### III

#### IMPLICATIONS FOR CONSUMER

To aid in communicating the implications of this research for consumers in terms of the proposed legislation permit me, by drawing upon the best available evidence, to construct a thumb-nail sketch of the thinking processes of the consumer when she is confronted with a new product, or an altered product. (John A. Howard, "The Theory of Buyer Behavior," in the proceedings of the Symposium on Consumer Behavior, April 12-14, 1966, University of Texas and being published by the University of Texas.) The buying behavior that is stimulated by these thinking processes, I will call "the housewife's purchasing cycle."

Let us begin with the instance when she first encounters a new product and then I will deal with the instances where the consumer is buying a product that she has used a number of times before. When she first encounters a new product, research has shown that she asks herself three questions about it, consciously or subconsciously.

"What will my husband think of me if I buy it? Perhaps he will think it an emotional female extravagance. On the other hand, he may praise me for finding something that makes life easier." Evidence on the dominant role of the husband's preferences are plentiful. In summarizing his study of food buying habits, a Harvard sociologist wrote, "Children's desires also had to be met, but even more important to these women was the task of satisfying the wishes of their husbands \* \* \* the husband's likes and dislikes are fixed, immutable and paramount. All housewives admitted that they cooked \* \* \* differently whenever their husbands were not at home." (Bruce Finnie, *Food Costs and Values*, Arthur D. Little, Inc., pp. 159-160.)

"What will be the effect on my role in the home, will I be needed more or less?" is the second question she asks herself. In our work at Columbia University we are currently studying how housewives accept a number of new products and one is a radically new food product. We are finding a sizable proportion of the housewives opposed to it because it permits a meal to be prepared in two minutes or less. These housewives fear that they will be less essential to the preparation of the meal. Also, they fear that each member of the family will prepare his own meal whenever he pleases, which will lead to the breakdown of the custom of a family breakfast. They see the meal as a time when the whole family is together and when the family ties are strengthened and children guided in their attempt to deal with important moral problems. Other housewives recognize this possibility but are not seriously concerned about it. The remaining housewives are pleased to be freed from a monotonous task.

This example of how housewives differ in their view of a product illustrates a fact throughout consumer buying. Consumers are often enormously different from each other. Any attempt to lump them together can lead to misinterpretation. Specifically, the needs of some housewives make them want one size of package and the needs of another housewife make her want another size, so that it will be difficult and probably impossible to standardize packaging as intended because we cannot standardize the needs of people, and yet the government witnesses for the bill have said that they wanted standardized packaging. (For examples of statements by the advocates, see Tr. p. 116, line 7; p. 167, line 9; p. 219, line 9; p. 222, line 22; pp. 254-55, line 25; p. 116, line 14; p. 263, line 8.) In fact, as population has grown and incomes have risen, one of the major arts of marketing has become that of identifying these specialized population groups and serving their needs more precisely than was possible when they were treated as one big population.

"What will my neighbors think if I buy it; will they consider me a more or less desirable person to know?" is the third question she asks herself. One of the reasons she talks with her friends is to draw upon their experience with the product and on other knowledge they may have acquired. Further, she seems to be getting much more than just information about whether it is a good product in a technical sense but also whether it is a good product "for the kind of woman that I want my friends to think I am."

The effects of social influence in judging products are subtle but surprisingly pervasive. A number of studies in the past ten years have found supporting evidence, but one just completed by Professor Arndt now at Columbia University of 449 housewives in a university-operated housing complex is the most definitive. It documents the fact that receiving favorable information from a neighbor about a new product will increase her chances of buying it. If the information was unfavorable they are less likely to buy it. (Johan Arndt, "Perceived risk, sociometric integration, and word of mouth in the adoption of a new product," mimeo, June, 1966, a preliminary report. Arndt does not distinguish between whether the purpose of the word of mouth information was to meet the housewife's social requirements or simply to get functional information.)

The more subtle social influence—the housewife buys a particular brand merely because it is socially acceptable—has been documented in areas of human behavior other than buying. Also, all of us can recall when we were entertaining an important guest how we bought a special brand of whiskey because this brand was more acceptable socially than other brands. But perhaps the role of social influence should not be surprising. Social distinctions are reflected in our eating. Servants do not eat with the master. Moreover it should not be surprising in our economy. When the standard of living is low, the housewife must buy food according to how much energy it will give her family. As the standard of living rises, she is more and more free to use other criteria by which to judge products, and it is believed that the American society is moving in the direction of placing more emphasis on the influence of other people in its consuming habits. (This thesis has been advanced by the distinguished Harvard sociologist, David Riesman, in his widely-quoted book, *The Lonely Crowd*.)

As the housewife uses the new product its social implications become less because she has answered these questions. The functional criteria, for example, taste and nutrition in the case of food, is more important in her decision of whether it meets her needs. Once having satisfied herself that it does meet her needs, she more and more buys it on a regular basis to replace her old brand. She develops a habit of buying the brand. Marketing people have a name for this habit; they call it "brand loyalty."

This tendency for consumers to "learn to buy" a brand from experience is the same way that humans learn to do most everything else in life. It has been well documented in recent years. For example, when a well-known fresh frozen orange juice was being accepted in the market in 1950 to 1962, 600 families in Chicago, making 16,000 purchases of fresh frozen orange juice were carefully studied. (John A. Howard, *Marketing: Executive and Buyer Behavior*, Columbia University Press, 1963, pp. 116-117.) If a housewife had bought this brand on the last purchase only, there was a 33 percent chance she would buy it next time. If the last two times, there was a 55 percent chance of buying it next time. If the last four times, there was an 80 percent chance of buying it the next time. This was true though prices were changing significantly in the market. The important point is that the more a housewife has bought the product the more likely she is to buy it again. Put another way, from experience and from talking with her friends she "zeros in" on a particular brand; she develops a habit of buying that brand; she develops brand loyalty. This tendency to use a habit, to be habitual in our buying is not surprising because largely through habit the human being is able to survive. A little introspection will recall how much of our entire behavior is habitual.

This process of "zeroing in" on a brand seems to be marked by two characteristics. First, she more and more limits the number of brands she compares. Second, price becomes a significant consideration in her choice. Once she has fully "zeroed in," however, price is no longer relevant. Hence, when we talk about price as a factor it seems to be applicable only at one stage in her purchasing cycle, that stage just before her brand buying becomes habitual.

The secondary role of price has been documented many times. The Survey Research Center at the University of Michigan did one of the finest studies of the consumer and her attention to price as a part of a much broader investigation of how she makes her buying decisions. As you gentlemen know, the Survey Research Center is one of the most respected economic research agencies and its semi-annual report of consumer intentions to buy which was initiated for the Federal Reserve Board more than ten years ago is widely used for planning purposes in industry. Therefore, I must clearly distinguish between the work done

at the Survey Research Center, the University of Michigan and the report of how 33 wives of students compared products against the clock in a supermarket prepared by Monroe P. Friedman from Eastern Michigan University and cited by Mrs. Peterson.

The Survey Research Center studied the purchasing decisions of 1,150 families for two products, large household durables (TV, refrigerator, washing machine and stove) and sport shirts. These two products were selected because they were thought in a number of senses to represent the two extremes of consumer buying situations. When recent buyers of each respective product from 1,150 families were asked what features of the products they were looking for when intending to buy, the following results were obtained:

<i>Durable goods</i>		<i>Sport shirts:</i>	
<i>(types of features):</i>		<i>Percent of buyers</i>	
Price -----	6	Price -----	4
Brand -----	21	Brand -----	2
Mechanical properties -----	21	Style cut, color, pattern, appearance -----	45
Performance -----	9	Specific fabrics -----	34
Size or capacity -----	19	Durability -----	3
Appearance -----	13	Washability -----	14
Durability, servicing guarantees, reliability -----	2	Special sizes -----	2
Operating costs -----	1	Other -----	2
Other -----	3	No specific features -----	23
No specific features -----	39	Not ascertained -----	3
Not ascertained -----	8		

(The totals add to more than 100% because some people mentioned more than one feature.) (George Katona and Eva Mueller, "A Study of Purchase Decisions," in Lincoln H. Clark, *Consumer Behavior*, New York University Press, 1954, pp. 30-37.)

As the figures indicate different features were used for each product but in neither case was price a dominant consideration. Specifically, in consumer durables only six (6) percent of the buyers of TV, washers, etc. referred to price even though the consumer is paying out a large amount of money, for example, \$200.00 to \$300.00. In sport shirts even fewer mentioned price, which is as we would expect because the price is lower.

There might be a tendency in more frequently purchased products than household durables and sport shirts to emphasize price but a very important offsetting tendency is the amount of the purchase price which in the case of durables far exceeds food items. People shop more carefully when they are spending a lot of money. These figures indicate that features which we would think of as involving "quality"—style, cut, pattern, appearance in sport shirts, for example—were far more important than price as I have emphasized.

The principle mentioned earlier that consumers remain brand loyal holds except for two conditions. First, if there is a major change in the market such as a price upheaval or another new brand or change in a brand, she may make some brand comparisons and go so far as to shift her loyalty temporarily to see if something is better. Except for this significant market change, however, she will continue as a loyal buyer.

Second, after a period of buying the same brand, she and the family became fed up with it and want variety. She then begins to look around for something better. In this stage of her purchasing cycle she is very receptive to trying new products and to information about new products. This desire for variety has not been documented in buying yet. It is becoming well supported in general human behavior, however, and there is no apparent reason why it does not apply to buying food. (D. E. Berlyne, "Motivational problems raised by exploratory and epistemic behavior," in S. Koch (ed), *Psychology: The Study of a Science*, McGraw-Hill, 1963, Vol. 5, pp. 284-364; D. E. Berlyne, "Curiosity and Exploration," *Science*, Vol. 153 (1966), pp. 25-33.)

In fact, if you think of your own experience, most of us would expect this phenomenon to be especially important in food. One of the standard American jokes is the boredom with the many ways of serving turkey after Thanksgiving. The importance of variety was well documented in a study of food habits. "All of our (housewives) stated that they eagerly sought out new products and recipes in the service of trying to satisfy their own and their family's desires

for variety. They canvassed the stores, questioned friends, read newspapers and magazines, and tried suggestions on product labels. Their eagerness for information in this area seemed to be insatiable. \* \* \* The ever constant search for variety was a key theme in all groups." (Finnie, *op. cit.* p. 161. "Housewives" was substituted for "panelists" who were housewives.)

Now permit me to summarize the behavior that makes up the consumers purchasing cycle. She encounters a new products; based on her husband's attitude, the effect on her role in the home, and her friends' judgments, she decides to try it. If she likes it, she becomes loyal to it after a few purchases. After a fairly lengthy period of use, she has an urge for variety, for something new, and begins to look around. Hence, the cycle starts all over again.

Finally, I would like to emphasize that consumer buying behavior can be quite complex and that any simple view of it such as that a housewife buys only by comparing price and quantities can be terribly misleading. Complicated motivation sometimes underlies it. I cited the example above of how some housewives fear instant foods. As another example, permit me to present a careful survey of 2431 adults by Professor Bauer of Harvard as further evidence of how complex consumer behavior can be. In this study food was the most talked about category of the B.L.S. Cost of Living Index, which includes recreation, housing, clothing, home furnishings, medical care, automobile transportation and personal services. (Bauer, *op. cit.*, Table I, p. 122.) It would be very easy to conclude from this that to consumers the cost of food is very important and anything which raises the cost of food is important to them. These same women also felt they were getting "most value for what they spent" from food as compared with all other components of the Cost of Living Index.

The conclusion that Professor Bauer has drawn and in which I would concur is that housewives have only a general feeling that the cost of food is high and this is so, not because they feel they are being cheated, but because so much of their budget is devoted to it. (In fact, when those people who have strong feelings about the "cost" of food are separated out from those who do not, both groups rate individual food items in the same way.)

A further interpretation I would make is that the necessity to buy food conflicts in a housewife's mind with spending money for personal gratification such as jewelry, cosmetics, hairdos, and clothing. This conflict is something she does not like to discuss publicly because she feels obligated to place the family food requirements above these personal gratifications. But like all of us, she feels a sharp twinge of dissatisfaction at having to forego some of the personal gratification to meet the requirements of providing as best she can for her family within the limits set by her husband's salary. Under these circumstances, she has a number of motives and she cannot satisfy all of them. This leaves her unsatisfied with her success at buying. The results may be exaggerated statements and complaints. For example, from the study by Bauer, food was first among the items of which people say they like to complain but are not too serious about. Emerging from this evidence is the conclusion that those housewives who do take their opinions seriously convert food into a popular topic of conversation on which people who do not take their own opinions seriously can find an opportunity for general, nonspecific griping. (Bauer, *op. cit.*, p. 127.) This conversation and griping can be interpreted as an outlet for the frustration generated by the conflict the housewife faces in balancing family needs against personal gratification.

I have described a number of characteristics of the consumer: (1) except under limited circumstances she is not sensitive to price; (2) she is very sensitive to quality, to whether the product meets her needs, and that an important determinant of "quality" is what her husband and friends think; (3) periodically she avidly seeks variety especially in food; (4) she develops brand loyalty, the habit of buying a particular brand because it simplifies her life; (5) her motivation can be complex and difficult to identify. These characteristics have a number of implications for the proposed legislation.

#### IV

##### RELEVANCE FOR PACKAGING LEGISLATION

Gentlemen, you may be asking, "What is the relevance of the foregoing description of the buyer for the issues faced by the Committee?" This question can be answered in general terms by saying that the legislation will have two kinds of undesirable effects and will not have the desirable effects that the proponents



seek. The two undesirable effects will be inflation and retardation of economic growth. Inflation is the immediate or short-term consequence and the deterrence of economic growth is the future or long-term consequence.

#### INFLATION

Permit me to examine the inflationary effects first. It seems to be generally agreed that the legislation will require the replacement of some of the packaging equipment now used by food and other manufacturers. The advocates of the bill have not offered an estimate of the amount of this cost, but whatever it is, to that extent there will be two inflationary consequences. First, in a period of inflation price increases commensurate with cost increases are usual. Second, more packaging equipment will have to be produced. This production will generate additional income in an economy that is already suffering from so much income in relation to the available goods and services that prices are being pulled upward. Particularly under conditions of rising incomes consumers usually accept these price increases. Further, the price increases will be occurring in food where, as I indicated earlier, consumers feel they are getting their money's worth than in any other component of the market basket represented by the BLS Cost of Living Index. This confidence in the value will perhaps tends to dampen any resistance they do feel. Hence this characteristic of the buyer not to be sensitive to prices will at such times contribute to inflation. Finally, food makes up a large part of the budget of most families and hence inflationary effects in this area are particularly painful. This will be added to an already fully inflationary situation such as during the month of July when the Index continued its upward climb to mark the greatest period of increase since 1957. In New York City food prices accounted for 25 percent of the July increase in the Index. (*New York Times*, August 23, 1966, pp. 1ff.)

Now, please permit me to examine the long-term effects of the legislation, the retardation of economic growth. There are a number of aspects of economic growth but two in particular concern us here. First, true economic growth is in part a result of consumers being able to buy better products, and anything that prevents this product improvement is retarding growth. As a technical point, product improvement does not show up in Gross National Product, but this is merely a flaw in our system of national income accounting. No one can question, however, that our true satisfaction has increased as a result of new and improved consumer products. The second aspect of economic growth that concerns us here is the fact that as a family's income grows it must spend a larger proportion of that income and save a smaller proportion if we are to continue to grow. If the housewife should cut her spending and thereby increase her saving, economic growth will slow down, other things being equal. I shall now discuss product innovation and discuss later its effect on consumer saving.

#### EFFECT ON PRODUCT INNOVATION

Will the legislation slow down the rate at which companies introduce new products and product modifications? I am fully persuaded that it would slow down the rate of new product introduction. Permit me to explain why. A consumer cannot tell you whether she wants a new product enough to pay for it until she is both confronted with it and has had the opportunity to use it. That this should be so is not surprising in light of the complexity of some of the motivations which underlie buying that I explained earlier. The fact was discovered in the 1950's when market research techniques were being rapidly developed. Repeatedly companies attempted to evaluate new product ideas by asking consumers whether they would buy the new product *if it were available*. The results were unreliable. The failure of this technique forced manufacturers to the test market whereby the new product is actually introduced in one or more cities.

The fact that she cannot tell you with any degree of accuracy whether she will buy it places the responsibility upon the company to be the initiator of new products. Being the initiator requires the company to undergo the very heavy costs of developing a new or modified product, of making it available on the retailer's shelf, of telling Mrs. Consumer about it through advertising and introductory promotional offers and of waiting for her to try it to decide whether she likes it enough to buy it again.

The time required to bring a new product to the market suggests something about the costs and period of commitment that is involved. In a survey of food

manufacturers about how long it takes from the idea stage to full distribution the results from 38 companies are summarized as follows :

- 25% of all new products take less than 12 months.
- 26% take between 1 and 2 years
- 24% take between 2 and 3 years
- 14% take between 3 and 4 years
- 6% take between 4 and 5 years
- 5% more than 5 years.

(Christopher Smith, "A Sample Survey of Food Processor's Assessments of Consumer Needs When Introducing New Products," Arthur D. Little, Inc., p. 213.)

Estimates with regard to specific products were obtained in another survey. Cold breakfast cereal ran 55 months; cake mixes, 29 months; frozen dinners and specialties, 41 months. (Buzzell and Nourse, *op. cit.*, p. 89.)

Merely the research and development expenditures devoted to the particular product averaged \$122,000 per product in six companies producing 21 new cold cereals. The marketing research averaged \$60,000. Both estimates are much too low, however, because they represent only the expenses charged to the specific products. In each case there is a large number of people involved whose salaries are charged off to overhead. (Buzzell and Nourse, *ibid.*, p. 91.) Worse yet, company records seriously understate the actual costs because one of the major cost elements in planning the research, getting the product ready for market and introducing it is not accounted for: the executives' time devoted to supervising the development of a new product and to evaluating it at each of many stages.

The risk that Mrs. Consumer may not like a new product that is offered to her well enough to buy again is very high indeed. For industry as a whole the proportion of new products that fail *after* they are introduced to the market is estimated to be fifty percent. (Nelson, Peck and Kalachek, *op. cit.*, p. 125.)

Specifically in the food industry it is about 40 percent. Twenty-two percent of the new products were discontinued after test marketing; another 8 percent after limited distribution was achieved; 9 percent were discontinued after the product had entered full distribution. (Buzzell and Nourse, *op. cit.*, p. 113 and Table 14, p. 110; for a more detailed analysis going back to the original idea stage see Christopher Smith, *op. cit.*, Table I, p. 195.)

To require the manufacturer to seek government approval for a change in package size, as many of these new products and changes in existing products would, is to handicap him in an already risky enterprise. But still more damaging is that it would weaken the incentive for him to innovate in the first place. The incentive now is that the innovation will give him a competitive edge for a short period of time. The importance of this competitive edge—to be in the market first—is a point that has been made by a number of the company representatives. There are significant reasons why they feel this way.

Earlier I mentioned that consumers tend to be loyal to a brand once they have begun to use it. It is this potential loyalty that makes it important for a company to be in the market first, assuming of course that the company's product is a good one. The first company in captures this loyalty. As one food company executive put it a few months ago in speaking of instant coffee, he would prefer to have three loyal buyers to seven non-loyal buyers. Further, there is some evidence that loyal consumers actually buy more total quantity of a given product class, irrespective of brand, than does a non-loyal consumer. Hence, it is not only the time advantage that introducers of new products seek but also the loyalty advantage. To force a manufacturer to seek government approval for a new package requires time which his competitor will use to catch up with him. Also, it increases the possibility that competitors will obtain and quickly use helpful information that our innovator has usually developed at considerable cost. In fact, one of the great limitations that a manufacturer faces in attempting to reduce risk by using a test market is that his competitor will learn about the new product from the test market.

One question that I have not addressed myself to and which may be in your minds although it was touched upon by a number of company representatives is: Does new product introduction involve packaging changes? It often does. Permit me to briefly review some of the examples from other testimony:

The Swanson Company introduced frozen dinners in three-compartment packages (Tr. p. 675, line 20). Campbell Soup a few years later brought out a four-compartment dinner by which it was possible to include still greater variety

(Tr. p. 677, line 3). Pepperidge Farms Goldfish crackers is still another example (Tr. p. 677, line 17). Campbell's effort to develop a triple condensed soup will require a new package, a much smaller one (Tr. p. 679, line 4). With Nabisco's graham cereal, eleven ounces filled the same volume as fourteen ounces of Cream of Wheat (Tr. p. 423, line 2). Cheese has been placed in an aerosol container (Tr. p. 424, line 4). A re-usable candy container to be used for other purposes but of quite different shape than the traditional package was introduced by a candy company (Tr. p. 577, line 17). Polyethylene bags permit the heating of pre-packaged foods without loss of nutrients in the cooking water. (Tr. p. 610, line 8). It was found desirable to pack margarine in one-half pound sizes in order to obtain an attractive package (Tr. p. 624, line 9). These are merely some of the examples used. A systematic survey would yield impressive evidence, I am sure.

In my opinion, this legislation gives the housewife a choice between standardized packaging with fewer new or improved products and unstandardized packaging with more new or improved products. If she is presented with this choice, I believe that her answer will be clear: she prefers the new products. Each year the food industry is offering her more distinctly new products than it did the previous year. (Buzzell and Nourse, *ibid.*, pp. 65-66.) How eagerly the housewife seeks out these new products and product improvements when she reaches that stage of her purchasing cycle of being dissatisfied with her current brand was documented above.

#### RETARDED ECONOMIC GROWTH

A third possible consequence of this legislation is to retard economic growth of the country. One of the major concerns voiced by serious students of economic growth is that the consumer's desire for products and services will not keep pace with the rise in their incomes that our economy is capable of generating for them. Nelson, Peck and Kalachek in their careful not-yet-published study for the Brookings Institution on public policy and technological process emphasize this. (Nelson, Peck, and Kalachek, *op. cit.*, pp. 171 ff.) In a nutshell the fear is satiation of the consumer. Based on some reasonable assumptions it has been estimated by economists that average family income may reach \$50,000 per year in another sixty to seventy years. If that is so we can easily imagine the possibility that the family's expenditures as a portion of its income will go down and its savings will go up, and this will slow down the rate of growth. I suspect that most everyone would much prefer that the consumer continued her role as a major generator of economic growth.

Having made the point that the consumer's satiation can slow down the rate of economic growth, now permit me to document the point that product innovations will help prevent consumer satiation. Professor Eva Mueller at the University of Michigan reports, "Our studies indicate that the desire for new features in household appliances makes for the replacement of middle aged appliances which, in the opinion of the owners, are still in good operating condition. We found that persons who expressed interest in the new features more frequently had buying plans than other consumers, and there was also some indication from a small sample that they made more purchases in the subsequent year. I therefore believe that innovations are an important element in our economy and that they *do* stimulate consumer expenditures." (Eva Mueller, "Comments on 'A Dynamic Element in Consumption'," in Lincoln Clark (ed.) *Consumer Behavior*, Harper and Bros., 1958, p. 443.)

Further, the point was made earlier that people psychologically seek variety, that within limits, they want change. If this desire for change is not met, the satisfaction that the consumer derives from the economy will be less and so Gross National Product will, in effect, have declined. (Even if product innovations do not cause consumers to increase their expenditures as a portion of their income, the product improvement in itself increases GNP because "there is no increased savings offset to the spur to business firms to invest in new facilities to produce the new products." Nelson, Peck, and Kalachek, *op. cit.*, p. 165.)

#### EFFECT ON BRAND COMPARISON

The legislation will *not* have the effect sought by the advocates of the legislation. The purpose of the proposed legislation as I have already read to you the statements of some of its advocates is to enable the consumer to buy more easily either by simplifying her arithmetic of dividing the price by the quantity (size

or weight) or by standardizing the package shapes. Is this really the consumer's major problem? As I have indicated above the best evidence we have suggests that this close comparison becomes relevant only at one stage of the housewife's purchasing cycle.

Will standardized packaging increase the tendency to make this comparison? There is no evidence that consumers do compare a large number of brands, and there is evidence to the contrary. In our studies of industrial buyers we have found that no more than six sellers are considered and usually less, depending on how important the product is. Market Research Corporation of America from its regular panel of 7,000 housewives finds that any given housewife buys very few brands in a given product class. If she considered a wide range of brands in buying we would expect her to actually buy a greater number of brands than she does in fact. (Personal statement by Samuel G. Barton, Chairman of Board, Market Research Corporation of America.)

Both psychological and anthropological evidence explains why the housewife considers a limited number of brands. Psychologists have found that accuracy of judgment greatly decreases when the stimuli being judged are more than seven. (George A. Miller, "The magical number seven, plus or minus two: Some limits on our capacity for processing information," *Psychological Review* 63 (1956), 81-97.)

This applies to judgments of single dimensions such as color or weight. When we deal with the brand which is a very, very complex stimulus it has a number of dimensions. As additional dimensions are added, people become more accurate but not by a proportionate amount. Anthropologists have made comparisons between primitive societies and people of highly industrialized countries (Japan and the United States) and have found no differences in the tendency to use complex categories. As one anthropologist described it, "Thus, psychologically speaking, it seems likely that the primitive hunter and the urban technician live in cognitive worlds of approximately equal complexity and crowdedness." (Anthony F. C. Wallace, "On being just complicated enough," *Proceedings, National Academy of Science*, Vol. 47 (1961), 458-464.) Incidentally, in a complex industrialized society we get around the problem of this human limitation by training certain people to deal with complex categories. The person controlling the flight patterns in an airport is an example of someone trained to handle more complex categories. He must identify a large number of planes and keep them in proper relation to each other.

Finally, those consumers who are inclined to make comparisons and calculate are those with larger incomes. In buying appliances, for example, younger folks, people of higher incomes, more education and more skilled occupations are much more likely to compare than older people, those with lower incomes, less education and less skilled occupations. (Katona and Mueller, *op. cit.*, pp. 54-61.) I suspect that by and large you are not as seriously concerned about the upper middle class. If this is true and if the advocates are correct about the effects of the bill, you will be helping the least, those whom you want to help the most. The upper income housewives are more able to take care of themselves.

Only anecdotal evidence that standardized packaging will increase the housewife's ability to compare has been presented by the advocates of the legislation. The one exception is some data developed by Monroe P. Friedman. In no way does his data contradict what I have said about the consumer. To explain more fully why it does not, I have attached Appendix I. Let me say here, however, that the advocates have used his study in a way which the author himself very carefully says it should not be used, namely, to infer from his facts anything about consumers as a whole. Further, the study tells us absolutely nothing about the criteria that consumers do use in choosing. Finally, the study does not face up to the central issue although surprisingly, Friedman seems to think that it does. The central issue: Does the consumer make greater errors when she is confronted with a larger number of packages? In fact, in a number of ways the study placed the housewives in such an abnormal situation that even if they did normally use the criterion that they were directed to use in the study a high error, as judged by the measure of confusion used there, would be expected. First she was asked to compare a far greater number of packages—"24 package types"—than our evidence indicates that she normally does. Second, the housewives worked under the pressure of time. Third, they worked under great social pressure: a complete stranger accompanied them through the store, carefully observing every act, and apparently

holding a stopwatch. That people under social and time pressure behave in an unthinking error-prone manner is supported by a great amount of psychological evidence. Fourth, in the study they bought product classes they normally did not buy and, hence, with which they were unfamiliar. Fifth, no allowance was made for the influence of a strong brand preference created in previous experience in causing the "errors."

## V

## CONFUSION DOCTRINE

The proponents of the packaging legislation are attempting to apply an 18th Century set of ideas to a 20th Century situation. Please permit me to explain.

The deception doctrine which has guided our policy with respect to the consumer for many years rests on two premises. The first premise is that except for deception, the housewife has adequate information to buy satisfactorily. The second premise of the deception doctrine grew out of our moral values which dictate that the source of the deception, the deceiver, the seller, is responsible for any deceptive acts. Now, under the label of the confusion doctrine the attempt is being made to extend these 18th Century ideas to a radically new situation. The confusion doctrine says that the seller is responsible for *any* shortcomings the buyer has in his capacity to make a choice. This represents an extension of an 18th Century belief to 20th Century conditions.

The 20th Century conditions are far different in my opinion than the proponents of this legislation seem to recognize. In Sec. II I have described the remarkable industrial research revolution now underway and its consequences, the increasing flow of new and modified consumer products. In Sec. III, by means of the concept of the consumer's purchasing cycle, I have described how the consumer responds in her purchasing behavior to these new conditions. Whether these new conditions create a "problem" for the consumer in the sense that public action should be taken is most questionable. It is clear, however, that this bill will probably create far more problems for the consumer than it will solve. Worse yet, the problems created by it involve not just the consumer but the economy as a whole. Sec. IV is intended to support this statement.

Since it is not clear that the consumer does have a problem, much less what ought to be done about it, I urge that action be delayed until a firmer basis for public action can be established. Further, I am sure that other questions involving the consumer and regulation of the market generally will be raised in the near future as a result of the research revolution. In a sense then, the issues being raised about this legislation are but part and parcel of a number of broader issues. These issues, too, will require a better factual understanding than we now have if an enlightened social policy is to result. Finally, there are reasons to believe that in research on consumer behavior a breakthrough is imminent. This breakthrough can provide much of the factual basis for sound public policy.

## VI

## CONCLUSIONS

In conclusion, I wish to say that it is surprising that we should be contemplating a policy which even the Soviet Union, with all of its economic controls, has found untenable and is moving away from. One of the advocates of this legislation has said that it embodies the first step toward standardization. At the same time, the planning officials of the Soviet Union have opted for greater variety. Professor Goldman, an economist from Wellesley College, after documenting and explaining this change in Soviet policy, writes, "It is questionable whether it is possible to have *efficient* self-service and an increase in labor productivity without product differentiation and advertising."—(Marshall I. Goldman, "Product Differentiation and Advertising: Some Lessons from Soviet Experience," *Journal of Political Economy*, pp. 348-357.) This legislation will move us away from the variety of offerings that is now available to the consumer.

I deeply appreciate the opportunity to appear before this distinguished Committee. I believe that the Committee can pioneer in developing public policy to

fit the new conditions created by the Second Industrial Revolution, a policy that will enable us to garner its benefits and avoid its evils.

#### APPENDIX I

##### CRITIQUE OF STUDY BY MONROE P. FRIEDMAN

The purpose here is to evaluate the study "Truth in Packaging in an American Supermarket" by Monroe P. Friedman which is the only systematic evidence put forth by the advocates of the proposed legislation.

A major and obvious point is that the advocates cite the study as evidence with no reservation. Yet the author himself devotes more than a page to saying exactly why this should not be done or to put it in the words of his introductory statement to this issue, "It is of interest to inquire what generalizations might be made from the present findings to other *8s* and other settings." (See pp. 13 and 14 of study.) The third "confusion measure" is especially vulnerable on whether the study, even if true of these housewives, would be valid elsewhere in the country. After saying, "Although superficially it might appear that the results of this study would transfer readily to other supermarket settings there are differences between markets which should be considered", he then proceeds to discuss at length why the transfer should *not* be made. (Pp. 13-14.) It is important to recognize that the Friedman study gives us absolutely no information about what criteria consumers do, in fact, use in buying. The author himself cautions:

"It may be that economy plays a small role in many of these purchases. However, for the purposes of this study the question of what actual criteria are employed by consumers at large in their supermarket shopping is largely an irrelevant one" (p. 11).

In the study the women were simply *directed* to use the price-quantity relationship (volume or weight per unit cost). The advocates of the legislation assume that this is the criterion used by consumers and then proceed to cite this study as evidence. In Sec. III of the report I have stated that the best evidence we now have is that only for a small proportion of buyers at any given time is this true. In a market where there is considerable price movement it could be true of the highly experienced buyer who has zeroed in on a *very few brands*, perhaps three or four at the most. Rapid price changes may cause him to compare price among these three or four acceptable brands. In the more typically stable market, it could be true of those buyers who are close to forming a habit of buying only one particular brand-size but have not quite yet achieved completely habitual behavior. With a little more experience in buying this product class, these people will become habitual buyers and discontinue price comparisons.

Each housewife was asked to describe the information she used in each decision. (P. 4.) Why the author did not publish this information, too, I do not know. One of the disappointments to economists in studying price, however, is that consumers usually put price fairly far down the list of considerations in buying as I have shown in my statement.

The author slips into the same logical trap as do the advocates of the bill. He accepts the premise that "a state of consumer confusion exists in the United States with regard to the true contents and prices of many common retail products". When he finds that with some product classes the housewives are "more confused" than with others, he concludes, "There is reason to believe that these differences reflect, at least in part, differences in packaging practices." The one opportunity he had to verify directly whether this was true of one dimension of "packaging practices", namely the *number of sizes of packages*, which is the central issue here, he did not attempt it. Hence, the study throws no light whatsoever on whether standardized packaging would decrease the number of errors as judged by Mr. Friedman's own measures.

In at least six ways the experiment placed the women in an extremely abnormal situation which would contribute to a high level of "confusion".

(a) Many of the products required more comparisons to be made than any housewife probably makes or as the author himself put it, "Since the *8s*' task was considerably more demanding than day-to-day supermarket shopping . . ." (p. 13). The author is not fully explicit on this, but he refers to those product categories in which "there were more than 24 package types." In Sec. III I

mentioned evidence that humans do not compare many alternatives. Here they are expected to compare more than 24. Further, the author shows no attempt to determine if the error was greater according to the number of comparisons. The failure to do so is a serious omission because as I have indicated *this is the central issue of the entire study.*

(b) The time pressure under which these people worked was great. They were given ten seconds per calculation with a maximum of four minutes in the case of product classes with more than 24 package types. There is good evidence from psychology that people working under time pressure tend toward stereotyped, unthinking behavior, behavior fraught with errors.

(c) Each housewife was accompanied by a member of the study team to observe her behavior. All of us know from experience that under social pressure our thinking is impaired. This has been well documented in psychology.

(d) The housewives were asked to buy contrary to the way they usually buy. They were directed to use only the price-quantity relationship as a criterion. No attention was to be paid to quality. In survey after survey I have seen of factors that buyers use in choosing brands, quality, or some specific aspect of it, heads the list. Further, the Friedman study makes no allowance for differences among people in what they want. For example, he assumes that all housewives prefer the same concentration of sodium hypochlorite. (P. 12.) This may not be true at all. Also, and this is very important, his reference to the liquid bleach situation causes the reader to wonder if the housewives were not directed to use some more complicated criterion of purchase than "total volume or weight per unit cost."

(e) Some of the products were ones which some of the housewives did not use. Hence, they were buying products with which they were unfamiliar. This fact would tend to increase the error. The author attempted to check the significance of this, but with a sample of 33 people, the difference between errors with *familiar* products and errors with *unfamiliar* products would have to be large indeed in order to be detected.

(f) In the case of some product classes undoubtedly some of the housewives had strong brand preferences which in spite of the experimenter's directions could well have influenced their choice. He does not attempt to correct for this important factor.

In summary, even if the study were a valid measure of confusion, its results cannot be generalized. For the reasons I have indicated, it is not a valid study.

#### *Cake mixes*

Type	Weight	Size of cakes
Caramel supreme.....	1 pound 2½ ounces.....	2 8- by 1½-inch round layers; 2 9- by 1½-inch round layers; 1 13- by 9- by 2-inch oblong.
Sour cream fudge.....	1 pound 3 ounces.....	2 8- by 1½-inch round pans; 2 9- by 1½-inch round pans; 2 8- by 8-inch square pans; 1 13- by 9-inch pan.
Fudge.....	1 pound 2¾ ounces.....	2 8- by 1½-inch round pans; 2 9- by 1½-inch round pans; 2 8- by 8-inch square pans; 1 13- by 9-inch pan.
Spice 'n apple.....	1 pound 3.5 ounces.....	2 layers, 8 by 1½ inches; 2 layers, 9 by 1½ inches; 1 oblong, 13 by 9½ by 2 inches.
Fudge macaroon.....	1 pound 3¼ ounces.....	2 8- by 1½-inch round pans; 2 9- by 1½-inch round pans; 2 8- by 8-inch square pans; 1 13- by 9-inch pan.

#### *Cake frostings*

Type	Weight	Size of cake covered
Cherry pink party frosting mix.....	5¼ ounces.....	2-layer cake.
Dark chocolate fudge.....	14 ounces.....	2 8- or 9-inch layers; an oblong, 13 by 9½ by 2¼ inches.
Buttercream caramel.....	13¼ ounces.....	2-layer cake; 13- by 9-inch cake.
Lemon velvet.....	13.8 ounces.....	2 8- or 9-inch layers or an oblong, 13 by 9½ by 2 inches.
Buttercream milk chocolate.....	12¼ ounces.....	2-layer cake; 13- by 9-inch cake.
Coconut almond.....	8¼ ounces.....	Tops of 2 cake layers; 13- by 8-inch cake.
Creamy white.....	14 ounces.....	2 8- or 9-inch layers; an oblong, 13 by 9½ by 2 inch.
Satin chocolate (can).....	1 pound 5 ounces.....	8- or 9-inch layer cake, or an oblong cake, 13 by 9½ by 2 inches.

*Refrigerated biscuits and dinner rolls*

Type	Weight	Number of biscuits or dinner rolls
Parkerhouse.....	10.3-ounce.....	12
Baking powder biscuits.....	8-ounce.....	12
Buttermilk biscuits.....	do.....	12
Butterflake.....	8.6-ounce.....	12
Crescent dinner rolls.....	8-ounce.....	8
Swirls.....	8.2-ounce.....	8

*Refrigerated sweet rolls*

Type	Weight	Number of rolls
Cinnamon rolls.....	9.5 ounces.....	8
Caramel Danish.....	12.2 ounces.....	8
Raisin Danish.....	11.7 ounces.....	8
Orange Danish.....	11.9 ounces.....	8
Cinnamon rolls with icing.....	9.5 ounces.....	8

*Soups*

Type	Weight	Yield
Split pea with ham (can).....	11¼ ounces.....	2½ cups.
Cream of potato (can).....	10¼ ounces.....	Do.
Golden onion (box).....	2¼ ounces.....	2 packs, each pack makes 4 to 6 fluid-ounce servings.
Green pea (box).....	8 ounces.....	2 packs, 3 to 4 servings each (contents of each pack mixed with 3 measuring cups of cold water).
Tomato vegetable soup with noodles (box).....	5 ounces.....	2 packs, 4 to 6 servings each (contents of each pack mixed with 4 cups (32 ounces) cold water).
New England style clam chowder (can).....	15 ounce avoirdupois.....	4 servings (directions specify add 1 can of water).
Beef bouillon (jar) (granules).....	2¼ ounces.....	21 cups.
Beef bouillon (jar) (cubes).....	1.3 ounces.....	1 cube makes a cup of broth (12 cubes).

Mr. JARMAN. May I conclude, then, from your testimony, that you feel the consumer is adequately protected under present law?

Mr. HOWARD. I would not like to say that, sir, because I have been focusing on how the buyer has behaved in the last several years and I have not been looking at the total panorama of the implications of the question. I am just not qualified.

Mr. JARMAN. Let me ask this, then: Are you taking a position in opposition to the bill that is before the committee?

Mr. HOWARD. I am particularly taking a position against those sections, sir, having to do with 5(c)(5) and 5(d) having to do with packaging. Those are the ones that are the ones that I think would have the highly deterrent effects on innovation, long-term economic growth and, therefore, not beneficial to the consumer from the long run.

Mr. JARMAN. Based on your own experience in the general field, are there parts of the bill that you favor?

Mr. HOWARD. I would like to say, sir, that I have been deeply involved in designing this research project, laying the foundation for it. I have a large group of people to supervise and I have really not had the time to look at the total implications. It is out of my purview of expertise, sir.



**Mr. JARMAN.** Mr. Rogers.

**Mr. ROGERS** of Florida. Thank you very much, Mr. Jarman.

I found your testimony interesting and I think you have pointed up some of the concerns the committee has in approaching this whole field of standardization.

Also, Mrs. Ridley, I thought your testimony probably brought out the facts more clearly than we have had from other witnesses about how a housewife really goes about shopping.

I would agree with you that it seems to me logical that when a housewife goes into a grocery store she wants to know how many servings and discernible measure of servings will be obtained from whatever package she may buy.

It would be my feeling that some requirement was placed upon the manufacturers to say that they should, also, in addition to the ounces or the pounds, make sure that servings are described in a manner that every housewife can understand.

Now, it seems to me if we do that it does not matter whether it is in half ounces or quarter ounces or pounds or fractions of pounds or what as long as the housewife can know that there are four cups of this or it is an eight-inch cake or whatever it may be and it costs so much money.

As far as oil, Mrs. Rogers seems to be concerned about that. The price is going to be on every jar of oil. Now she is going to have to look at the oil to see how much it is and it says on the label, and if it says there are four cups of oil here in this bottle and here is the price, I don't know what more clear way you can set it forth for any person. I don't think the housewife particularly cares how many ounces are there, in fact, I think a lot of housewives maybe don't think in ounces necessarily. But I think, as you say, that you make servings what I can put on the table and if I have four people in my family whether there are going to be four cups of servings here or there are going to be four half cups. This is what I think we need to do.

If we would see that the law provides that, I think trying to standardize and tell every manufacturer, "You have got to make a certain type," even though a recipe may call for it in the cake, 16½ ounces to make an 8-ounce cake, but you can't package it that way. Why, this gets to be absurd.

In January, I went to Russia and I would hate to have to shop in Russian grocery stores because I can tell you there is no choice there and I think the housewife would not agree with that at all, and neither would I.

Your testimony has been most helpful.

**Mr. JARMAN.** Mr. Younger.

**Mr. YOUNGER.** Thank you, Mr. Chairman.

I am glad to see somebody come to the aid and defense of the housewife. I think the housewife knows more about shopping and bargains than anyone else, far more than any Government bureaucrat can tell them.

I have noticed a lot of people here in the audience that evidently are on the Government payroll. Outside of the committee I would like to have all of you that are on the Government payroll hold up your hands.

One, two, three, four, five, six.

Aren't you on the payroll? Well, why don't you hold up your hand? I mean, you are not ashamed of it, are you?

VANCE. Certainly not.

Mr. YOUNGER. Eight.

I am just glad to know and the taxpayers would like to know how many of their employees are here at the hearings right along. Apparently, there is no particular function for them to perform other than this because the hearings are available to anyone in the Department. They are published and it would not be necessary for the taxpayer's money to be spent in this way, in my opinion.

I do want to congratulate you Mr. Howard and Mrs. Ridley. I think you have added materially to the whole evidence that we have had in this hearing. I want to thank you very much.

Mr. HOWARD. Thank you.

Mr. JARMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

First, I would like to commend Mrs. Ridley for citing some of the best cooks in the country. [Laughter.]

The best ones I know of, anyway.

Thank you for your testimony very much.

Dr. Howard, I want to thank you for one of the most erudite statements I have heard: it certainly required a great deal of time and research and thorough analysis. Put it this way: Maybe having proponents and opponents has been superficial.

You hit on two points here that I do want to mention. One is inflation and the other retarded economic growth. I would like to ask you this question in connection with those two conclusions which you came to. Of course, inflation is in a sense too much business activity while retarded economic growth would be too little.

Now, in a sense, this is somewhat contradictory and I would like to ask you for your explanation of it.

Mr. HOWARD. Thank you very much, sir, for raising that question. I think it is a splendid one because it does look quite contradictory, the point being that the immediate problem when you have an economy that is running full tilt that we are drawing out of it about all we can and in fact we are beginning to exceed the limit of what we can pull out of it in terms of military needs and consumer needs, and at the same time the prices are beginning to rise.

Under those conditions any additional drain on it is going to push prices up further as we mentioned in two ways, both in terms of the increase in cost, that of replacing the equipment and, second, the incomes that would be generated in producing that equipment.

When that is true, when we are in this state of a highly inflated economy anyway, then the additional burden is going to push the prices up further. We hope, however, that that is a temporary situation, that we don't have to live with that for a long period, that we can get control of it and then again we will be worrying about can we maintain the kind of an increase in growth, the kind of an increase in consumer satisfaction which growth really implies, and it is there that we will not be concerned.

We will have replaced our packaging equipment and gotten back into a normal cycle again and then we will be concerned with will the

housewife spend enough of her money to keep her savings down to prevent a drain on economic growth. So it is the two different periods, the different conditions under which each one exists.

I hope I have been able to clarify.

Mr. KORNEGAY. You say that in view of the opinion that if this bill is enacted into law as it stands now before the committee that it would lead to inflation?

Mr. HOWARD. Yes, very definitely.

Mr. KORNEGAY. Do you have any opinion as to what would be the increase in consumer price in the marketplace?

Mr. HOWARD. Unfortunately, I do not, because I don't have the basic evidence which is how much actual equipment will have to be replaced. Given that, then, one could make some estimates on the current price increase but without that basic data we could not do it.

Mr. KORNEGAY. If any indicator to my people back home, they are far more concerned over the rising cost of groceries than they are in their ability to select between brands when once they go to the store. That is the reason I wanted to ask you those questions because I am very much concerned over the rise in cost of purchasing things, in general the inflationary effects it has.

I hear it from every quarter.

So I thank you again for your information on this subject.

Thank you.

Mr. JARMAN. Mr. Nelsen.

Mr. NELSEN. I, too, wish to thank the witnesses for their very fine statements.

Some statements have been made, something about having standard weights and packages, in other words, uniformly packaged so that a better comparison could be made but I am sure your research would indicate that there are times when there may be a shopper who wishes to buy a product and have a lesser amount because of the household makeup, for example.

At the present time, Mrs. Nelsen is out in Minnesota, so I prepare a meal and I go to the store and I buy package, for example, of peas, or whatever it may be, canned goods, with the idea in mind that I don't want a container of peas in the refrigerator standing there day by day. So I buy a package that meets my needs.

Do you not find this to be true in research, that this is often a factor as far as the package size is concerned?

Mrs. RIDLEY. Yes. I think there is another point here. For example, this package contains  $8\frac{1}{4}$  ounces and something else here contains, we will say, 12 ounces, or 14 ounces. Now if you made this package 14 ounces, the woman would have waste because it is too much for her cakes. This covers her two 8-inch layers or 9 by 13 but in order to equalize these weights she is going to have to buy more than she wants, and what is she going to do with the little bit that is left over?

Do you see what I mean?

Mr. NELSEN. Yes.

Mrs. RIDLEY. It is not practical from the woman's point of view.

Mr. NELSEN. What about a frosting mix, for example?

Mrs. RIDLEY. This is a frosting mix.

Mr. NELSEN. That is a frosting mix?

Mrs. RIDLEY. Yes. See, this is all predicated on the fact that it covers what is the usual thing. She buys an 8-inch cakepan or 9 by 13, this is what manufacturers make. She has a very definite idea of how many it will serve, cuts it in half, cuts it in quarters, then she probably makes three cuts out of that.

Do you see? She has got this all in her mind. She is visual but she does not know that that 12-ounce will have a cake waste of how many ounces, she does not carefully—she only cares whether or not it is the flavor that her family likes.

Mr. NELSEN. If she was interested in buying a cake on the basis of how much it weighs, the angel food cake would have a tough time competing, would it not?

Mrs. RIDLEY. Yes, of course. There may be 30 packages but if she knows her family does not like caramel or something she does not even look at those, you see. In other words, she is not going through 30 packages every time she goes to the market, she has a pretty good idea of what she wants.

Mr. NELSEN. Now going back to the standard size packages, we have had witnesses that have insisted that we standardize package sizes. We have had witnesses who insist that we have a standard weight in the package of competitive products.

Well, then we get back to my Wheat Chex argument. I checked into it and I found that the manufacturer in my area, the product became a crisper, a lighter aerated product. Therefore, to get the same weight in the box, you would have to have a larger box. You have the same components, one standardized box.

Mrs. RIDLEY. You cannot do both.

Mr. NELSEN. It is bound to be lighter if it is in the same size box. The manufacturer tells us it takes a half million dollars to change a processing line for a new size package. So these are factors that we have been running into while we have gone on this time and again. Of course, we are doing it because I think the record should be replete with evidence as to what the packaging industry will be up against.

I want to thank the witnesses for their very informative statements and certainly we have learned much from the statements that you have made.

I thank you very much.

Mrs. RIDLEY. Thank you.

Mr. JARMAN. Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. Howard, I have been looking forward to your statement. As I understand it your statement is built on a statistical basis, isn't it, as an economic study rather than approaching the problem as a behavioral psychologist.

Mr. HOWARD. Sir, it is based from both sides. I worked very heavily in recent years in psychology and sociology. The Ford Foundation is all in this direction.

Mr. ADAMS. All right. Then since you have done this, I was particularly interested in your comment on page 3 of your statement that there has been a revolution in the innovations of products and technical developments which is actually the application of scientific technique to new products.

Don't you agree that if we are in this industrial revolution, which I agree with you is going on, that we should have a comparable movement forward in the application of the scientific standards of weights and measures to the new products and innovations as they are developed?

Mr. HOWARD. Sir, if I understand the point, it seems to me that this would necessarily imply some control, some standardization, would it not, sir?

Mr. ADAMS. Well, let's take it back up one step. Do you agree that there is presently a proposal throughout the scientific world that America must within the next 10 to 15 years probably go to the metric system in order to be able to continue to operate in a world that is 90 percent metric?

Mr. HOWARD. I have heard some discussion of this; yes, sir.

Mr. ADAMS. And it is very difficult to do this because it would involve a horrendous amount of change in American industry; correct?

Mr. HOWARD. I would presume it does. I have really not looked into it, sir.

Mr. ADAMS. And it has been done in one or two industries, such as the drug industry. For example they have gone on a basic international standard now.

All right. Now I am asking you if the same sort of development is not necessary to deal with the new industrial revolution in packaging and in measuring?

Mr. HOWARD. You mean using a new measuring system is necessarily implied?

Mr. ADAMS. I am saying a measuring system that can deal with the modern concepts of packaging, prepackaging, and self-service; is it not necessary?

Mr. HOWARD. Sir, I have been working strictly with how the buyer does buy and working deeply in economics and psychology and I just have not been concerned about this area. Perhaps I should have but I am not, and I am just not competent.

Mr. ADAMS. Are you familiar, I am sure you must be, with what has happened in major portions of the food industry in producing standardization through the voluntary programs under title XV?

Mr. HOWARD. I know something of it but I have not studied it, sir.

Mr. ADAMS. Well, I would state to you this, that for example in the canning industry there are major sections of standardization that have been arrived at by industry in order to avoid great proliferation of equipment and to get down to a certain number of standard items.

I would ask you the question, "Isn't it possible that the Government has a responsibility to help not just the consumer but industry in trying to produce some standardization in the newly developing products?" For example you have mentioned such formula-type products as cake mixes, and certain dehydration products which can involve varying amounts of water within them. Take for example the various new formulas which have produced a new industry such as the detergents.

Don't we have some responsibility there to try, as has been done since Biblical times, to get a uniform set of weights and measures?

Mr. HOWARD. Sir, again I would say that my own work has been so removed from that issue that I really have been supervising a large

group of people involved in psychology and sociology at the very basic level and have spent a lot of time pioneering work that has never been done in the world before and I am isolated from these kinds of issues. I am sorry.

Mr. ADAMS. Then I will shift to that subject and ask you this: I believe you have pointed out that the housewife or the consumer, in your paper, and I think it is excellent, does not control what comes out, that this is done in terms of packaging and so on by the manufacturer, the processor in the first instance, that she has really a veto power.

Does that get down to it?

Mr. HOWARD. Yes; that is a fair statement.

Mr. ADAMS. You pointed out there is about a 50-percent rejection of the new products.

Mr. HOWARD. Yes, sir.

Mr. ADAMS. Which I think we both agree is a horribly inefficient system of innovation, is it not?

Now, do you further agree that when you mention brand loyalties and so on that the techniques of housewife behavior, she is being placed in a position of her judgment having to overcome advertising techniques which orient her toward particular types of value toward either brand names or color. Thus she buys as a result of an advertising technique to a very great degree rather than any type of price comparison or maybe even other behavior patterns?

Mr. HOWARD. Sir, I wish I could agree with you, and I know your point, but I am afraid I can't.

Mr. ADAMS. Then you believe that there are other factors stronger than the fact that she turns on the television every morning and her children watch it and they say, "Buy Post or buy Kellogg", and if she goes in a supermarket and she sees O'Brien's cornflakes on the shelf, don't you agree that O'Brien's cornflakes haven't got a chance? Do you believe she even considers whether her children should or should not have O'Brien cornflakes?

Do you think they even come into her realm of speculation?

Mr. HOWARD. Let me give you a good example of why I hesitate to go along with your point and that is we have got evidence that you can take in a Sunday evening show, a TV spectacular, for example, and run a study after the show and ask the women, "Do you remember what occurred at that point in the show?" And they do, and ask them, then, "Do you remember what occurred in that point of the show, say, another 10 or 15 minutes later?" And then ask them, "Do you remember the commercial that appeared in the meantime?"

As low as 30 percent do. Seventy percent do not.

Mr. ADAMS. Oh, I have no hesitancy in believing that but I would then ask you the next question which is that if she listens to that television for a month and during the course of that time the same advertisement saying the same thing, to buy the same colored package, does this—as was pointed out in the Hidden Persuaders—dictate her choice? Can you tell me if that isn't what happens psychologically?

Mr. HOWARD. I think it has a very limited effect.

Mr. ADAMS. You do?

Mr. HOWARD. I really do and I will tell you why. We have growing evidence, some that I have cited here in the references which I

would be delighted to talk over with you personally, and that is the capacity of the human to turn off information that he does not deem relevant.

Let me cite you an example of the study done of this. That is we found, for example, that the buyer's eye pupil will open when he sees a brand he likes and it closes when he sees a brand he does not like.

In other words, there are mechanisms built into the human being beyond his control that operates the closeout information he deems not relevant. I think we have survived in large measure by our capacity to turn off in spite of what advertisers would love to have us do.

Mr. ADAMS. All right.

Will you tell me if out of your statistical studies on housewives if you have found whether they will buy nonadvertised brands in a supermarket? In other words, your statistical evidence must indicate that the nonadvertised brands have practically disappeared, have they not?

Mr. HOWARD. Well, that is not true, sir.

Mr. ADAMS. It is not?

Mr. HOWARD. No.

Mr. ADAMS. I am very interested in what you have statistically on that.

Mr. HOWARD. I have seen passing studies. I have not investigated that, per se, so I cannot speak with the authority. I think I can find studies that will show what we call regional brands as opposed to national brands. Regional brands may not be advertised.

Mr. ADAMS. I would just state to you, and I would be interested again in your reaction from your statistics, that the regional brands (of the small canners, for example) have practically gone out of business, being unable to compete on the very thing you mentioned, brand familiarity.

I would like to know if you have any statistics that counter my statement, because I think it is an important factual point.

Mr. HOWARD. I would be very happy, sir, to look into it and send you a report.

Mr. ADAMS. All right.

The last thing is this, you have indicated there is a great amount of innovation and a tremendous number of new products come out each year.

Do you not believe that if a period of time were given, say a period of 4 or 5 years, using the techniques that have been developed in a great portion of the industry toward standardization—I refer again to the canning industry—the same thing has happened in the milk bottle area and so on, that without any additional cost to American industry they could build in great areas of semistandardization by simply moving toward one size box, as I understand they do now?

Mr. HOWARD. This may be true, sir, but I have no basis whatsoever, no evidence on it.

Mr. ADAMS. You have not looked into it enough to answer that?

Mr. HOWARD. No.

Mr. ADAMS. No further questions.

Thank you, Mr. Chairman.

Mr. JARMAN. We appreciate your being with us and certainly adding to our record.

Let the Chair announce that the committee will ask for permission to sit this afternoon. We stand adjourned until 2 o'clock or as soon thereafter as the business on the floor of the House permits our meeting.

(Whereupon, at 12:15 p.m., the committee recessed, to reconvene at 2 p.m. the same day.)

#### AFTER RECESS

(The committee reconvened at 3:07 p.m., Hon. John E. Moss presiding.)

Mr. Moss. The committee will be in order.

The first witness this afternoon will be Mr. Ralph Reuter, chairman of the Metropolitan New York Consumer Council.

Mr. Reuter.

Mr. Reuter, if you would like you may file your statement and summarize it for the committee.

#### STATEMENT OF RALPH R. REUTER, CHAIRMAN, METROPOLITAN NEW YORK CONSUMER COUNCIL, INC.

Mr. REUTER. Mr. Chairman, it is a rather brief statement by comparison with other statements such as you have received this morning so I should like to give it in toto with some changes if there is no objection.

Mr. Moss. You are recognized for that purpose. You may proceed.

Mr. REUTER. Gentlemen, our council deeply appreciates the opportunity to be heard with reference to the legislation before you. I also wish to thank the committee and in particular the staff for their very courteous treatment of the council and myself in arranging this appointment. They have been most helpful.

The Metropolitan New York Consumer Council is a coordinating body for some 170 religious, fraternal, benevolent, cooperative, credit union, labor union organizations having over 2 million individual members in the greater Metropolitan New York area.

We wholeheartedly support H.R. 15440. A fair packaging and labeling act is long overdue. The record of hearings clearly indicates the overwhelming need for such legislation. We do not intend nor could we hope to compete with the vast array of razzle-dazzle to which this committee has been treated by business and industry, nor could we hope to compete in money spent to attack this legislation by business.

However, though we do not have the pecuniary means, we do have numbers. We and others like us represent that vast faceless mass of consumers yearning to throw off the yoke of unconscionable profits through deception.

Gentlemen, shopping for food and household supplies was not too many years ago a very simple matter.

The small grocery store in the middle of the block or at the corner that once existed is not even there anymore. It has been replaced by the supermarket and the shopping center which are perhaps blocks and sometimes even miles away. The housewife once went to the store with her own containers and faced across the counter a grocer she knew very well and with whom she struck bargains.



Today's modern economy which has moved 90 percent of the American people into urban areas has driven away that type of grocer or butcher and placed into the hands of the housewife a pushcart. As she wheels her cart down the many aisles she observes that almost every characteristic of the old time grocery store has disappeared.

In place of the few scores of items and the old wooden shelves she sees today as many as 8,000 different items very neatly prepackaged and attractively displayed. She does not even have to ask for service for she serves herself.

Underneath all of this, however, is the one trait of a few of the old stores which perhaps should have been the first thing to be barred from the supermarket in this age of progress and plenty. It is the butcher's thumb which once pressed against the edge of the old fashioned scale. Then it was only one thumb. It could only be at one place at any one time. No matter how skillfully trained it was, it could be watched.

The deceptive devices which face today's housewife are not that easy to detect. One housewife describes the situation this way, and we have some 40 random interviews and I would suggest that they may be as scientific as the most so-called scientific surveys conducted by colleagues who call themselves economists, or more particularly business economists. Here is what one housewife had to say.

I am not just trying to be facetious or clever when I say that every time I go to the market I feel as though I am being a sucker, just as if somebody were taking advantage of me.

I have a large family and my husband has a limited income, after income taxes are taken off there isn't much left. I always try to shop just as carefully as I can.

I know I am not the smartest housewife, but really I am not the dumbest one either. I know how to look for a good buy when I am given a chance but today you know you are not given a chance when you go there. For instance even in buying common items such as crackers or soda pop which I buy just about every time I go to the market. I find myself confused and really completely frustrated as I cannot choose wisely because I really do not know what I am choosing.

I find labels and I look at them. For instance on the soda pop, one of them says "king size" and another "jumbo half quart." The next one says "full half quart" and another one would say "big 16 ounces." What's the difference between them? The prices range from 6 for 56 cents to 6 for 77 cents, and that is about 21 cents difference, which is not hay.

Then right alongside of these you will find a sign that there is 11- and 12-ounce cans with prices ranging from 6 for 53 cents to 12 for \$1. How do I know which one to buy? It would take me hours to really figure out which is the most reasonable one of all of them. I am not even talking about the quality—for that I would have to go and get my bifocals and have my daughter help me read the small print. Even if that were readable I wouldn't understand what those words meant. I would have to go and get a chemist to explain what those ingredients are. For instance, when I go over to the crackers, my gosh, it's even worse, and this is the kind of thing you find shelf to shelf, and I don't care which one you go to. They are all beautiful, fluorescently lit and everything else but it is the same darn problem in every single market. So if you really want to buy wisely and know what is going on, you really have to find time to talk to other housewives and your next door neighbors. I say this because the techniques of deceit and confusion are just so numerous that no one shopper can possibly know them all.

We took the lady's advice and talked to another housewife. The next person we talked to was a mother of three children, a housewife. Here is what she had to say:

The first thing I would like to mention is the way manufacturers price their products. They price them in such an odd and peculiar way. They have these

odd prices and odd weights and most of the time they put the weight in fractions. Now this completely confuses me. For instance yesterday I went to the market to buy a particular product and on the package it said  $15\frac{3}{4}$  ounces for 47 cents and next to it was the same product by a different manufacturer for  $16\frac{1}{2}$  ounces for 53 cents. Now this completely confuses me because I have no way of sitting down and figuring out which is cheaper,  $15\frac{3}{4}$  at 47 cents or  $16\frac{1}{2}$  ounces at 53 cents, unless I take a calculating machine and sit down in the aisle and figure it out. This is ridiculous and I don't have time for it because I am busy. I have three kids and it is impossible. If I did have the time and if anybody else had the time, I doubt if we would want to spend it that way. I think the manufacturer should plainly put on the package the exact weight so that it is understandable, like just 16 ounces instead of making it  $\frac{3}{4}$  of an ounce less or  $\frac{1}{2}$  ounce more.

We suggested to this housewife that some people have proposed that perhaps this problem could be solved by stating the cost of the ounce of the product, in addition to the gross weight. We asked her whether she thought this would solve the problem.

Well, yes, I think it would because then you could look at each package and easily compare.

It would be so much simpler, just round off the weight and the prices. On the products priced at 47 cents and 53 cents mentioned above, why don't they just make it 16 ounces for 50 cents. You know 1 cent more or half an ounce more one way or the other doesn't really make that much difference. Another thing really bothers me tremendously. I went to the store looking for bleach that I could use on all of my clothes. I found this one in particular that said "All Purpose Bleach." I looked at it and I said this is just what I want, this is perfect, so I bought it. It cost a little more but I figured while it was "all purpose" it is worth it. I took it home and began doing my washing. I sat down and while I was waiting for the machine to get to the next stage, or whatever you call it, I looked at the bottle and all of a sudden I spied in the corner of the package the statement "can be used on all material except nylons, dacrons, and certain kinds of rayon." By this time I had already put my husband's dacron shirts, plus some of my nylon lingerie in the washer with the bleach on it. Now I mean what can you do? Here everything is practically rinsed and this is supposed to be an "all purpose bleach" and it cannot be used on these things. I don't know, I think they are trying to pull the wool over my eyes.

The next point made by this housewife was that housewives had difficulty in finding and deciphering net weight and lists of ingredients on packages.

I went and bought this particular package and all the printing was in yellow ink on gold foil. I think that is kind of funny, isn't it, because you just cannot read the printing unless you get it right up close in the light at a certain angle so that you can see it. Now gold ink or yellow ink on gold foil is ridiculous.

What was it that was printed in yellow ink on the gold foil? Was it the name of the product? Was it the manufacturer's name? What was it?

No, it was all the instructions and the content—everything that was important. Of course the name of the product was right out there very plain.

Not gold ink.

No, I think black or green or something. It was very plainly printed, but all the instructions and everything else that was important to the purchaser was in this yellow ink on gold foil.

We asked the lady: Was there a possibility that the manufacturer used yellow ink here because it would blend in better with his package design and color scheme?

Oh no, definitely not. I think he is just trying, as I stated, to pull the wool over my eyes. That is all. Another example is on the soft drinks I bought in a carton, I couldn't tell what the net weight on it was, whether it was a quart or a pint,

because the net weight was pressed into the glass on the bottle. The bottle was filled with a dark liquid, so that until you had emptied the bottle you couldn't see or know what the net weight really was unless you went feeling the bottle like braille, that is impossible. I suspect that the manufacturer knows that this is improbable and that is why he did it.

I think that it is the law to print what is in the bottle and how much there is in it. But I don't think that unless it were the law that he would even do it, I figure that he is making it very difficult and still keep within the law, although he is defeating the purpose of the law in doing it in such a confusing form. Another thing I want to mention to you, I bought this particular brand of napkins for years and you know it had a great big sign on the front "In the Package 80 Napkins," great big red letters, "80." I used to get two packages for 23 cents. One day I went into a store and right next to it on the same shelf was another brand of napkins, the same form of package, the same size as the one that I had been buying, it was only two for 19 cents so I was thinking actually there is a price difference and I looked to see how many napkins it had in it before I bought it. I couldn't find it anywhere. It looked as though it was probably the 80 napkins. I took it for granted seeing how it was the same size and everything. I took it home and later my son found out. He was playing around and looking at the package and he discovered that it only had 60 napkins.

How did he find out it only contained 60 napkins?

Oh well, it was printed on the side of the package in green ink on a black background. Now you know green on black is just like printing black on black, you cannot see anything. It is practically a waste of time even printing it. If they have to comply with some law, I think they should have to print it plainly so that everyone can see it.

In this series of interviews we spoke to some 40 housewives, all of them had the same bitter comment about their weekly shopping experiences and their inability to cope with the ever increasing multitude of items on the shelves obviously intended to deceive, baffle, or defraud everyone within sight.

You will see that these housewives in their statements indicate their dismay at facing up to the problems of shopping in supermarkets. Now, the law that is being proposed would make it easier to compare these prices that these housewives have difficulty with by requiring more prominent and more uniform labeling of net contents by giving the Federal Government authority to simplify the number of sizes of a particular product and other reforms.

Today widely varying weights often stated in fractions of an ounce and different weights and different ways make it hard to compare different packages.

Many food, soap, and toiletry packages also are designed to varying shapes or even optical illusions which convey a misleading impression of the quantity, such as the wasp-waist bottle.

It is our understanding that the bill now before you would end such selling tricks of calling the smallest package "large" and such confusing designations as "king size." We would have thought that the simple truth which this bill calls for would have received the unanimous support of that part of industry and business which is honorable, decent, and respectable.

The barrage to which this legislation has been subjected would appear to certainly throw into doubt the intent of a considerable part of business. Are they really interested in telling their customers the truth?

Our experience indicates that those who have been fighting on behalf of the consumer have not been able to obtain an even break at getting a public hearing.

We have had our own experiences. For example, the "Today" TV show gave one of your fellow Members of Congress an opportunity to attack this bill, but when our council requested time we were denied. We could cite other examples.

The interest in the public's welfare of many who are opposed to this legislation is best demonstrated by an organization which our council knows well. I am speaking of the Staten Island Chamber of Commerce right in our own backyard. This organization has been passing out leaflets against this legislation at the ferry terminal, probably to intimidate the Congressmen from the area.

This very same organization has opposed every single piece of meaningful social legislation for many years. We are proud to be on opposite sides. We are certain this Congress and in particular this committee will not want to be on the side of those who are so inclined.

We know that Congress is for the people and trust it will act on their behalf.

Gentlemen, nearly 9 years ago when our organization was founded there was but one other organization of its kind in existence. Today there are 19. The number is growing rapidly. They are not growing because the consumer has no needs. They are growing because the consumer needs this legislation and much more. They are growing because of the growing number of consumers who are sick and tired of the deceit, fraud, and deception perpetrated upon them.

We are intent on not having the prediction of the business community come true that we are merely a phenomenon of the moment. We are determined to do this for protection of those American ideas and ideals which we all hold dear.

We are intent on protecting these ideals from being systematically destroyed by American business from within.

This legislation is an admirable beginning to stem the subversive drive of American business to deceive and defraud the American consumer, which means all of us. Why not spend the millions upon millions of dollars now spent on deception on more and cheaper products, for better and improved products.

Some industry spokesmen claim that regulation will burden industry and imperil free enterprise. Standard sizes have not harmed the milk, butter, sugar, or flour industries. Other industries have withstood the shock of the Wool Products Labeling Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act, and the Poultry Products Inspection Act.

These laws have not weakened those industries nor have they strait-jacketed imagination or creativity.

On the other hand, the packaging industry has not worried about the burden placed on the public by slack filling, incomprehensible weights and measures, multimeaning adjectives, and inconspicuous quantity designations.

They are not concerned about the loss to those shoppers least able to afford them, of misleading or deceptive labels. Yet present practices are heartless when the economic standing of those persons most affected are considered.

There is nothing wrong with the law in modern society which, in its enlightening way, seeks to protect the more defenseless segment of our population from situations brought into being by our complex economic structure.

A few cents loss to a consumer on any one purchase may not seem like much, but the industry knows what it means when they sell several million boxes of that item. That is why they are fighting this legislation. The few pennies on each purchase that may add up to a substantial erosion of each consumer's budget amount to an impressive fortune in profits to them.

Packaging as we see it practiced today is part of a firm competitive strategy to create even greater sales and profits. However, increased profits derived from deceptive packaging is difficult to justify in today's marketplace.

The maxim "Yet the buyer beware" is a cruel and immoral doctrine. Some are bold enough to admit that the weird weights and sizes come about as a means of raising prices without appearing to do so rather than subject the consumer to the direct price increase.

Mr. Moss. Mr. Reuter, it is going to be necessary that we recess for about 20 minutes to permit the Members to respond to an automatic call for a vote on the floor of the House. We will be back just as quickly as we can.

The committee will stand in recess.

(A brief recess was taken.)

Mr. Moss. We will ask Mr. Reuter to return with his testimony.

Mr. REUTER. Some businessmen are bold enough to admit that weird weights and sizes come about as a means of raising prices without appearing to do so; rather than to subject the consumer to a direct price increase, the size and weight of the package is reduced.

The housewife is supposed to be content that the price of her favorite cereal remains at 39 cents although the box now only holds 12 instead of the former 18 ounces; but in most cases, it is quite a few purchases later that the mother discovers that there has been a price increase per ounce. This bill would have manufacturers who find their costs creeping up, either absorb the cost or openly raise prices.

This is done in the case of milk, butter, and the flour industries, to date all sold in standard sizes, and both the vendor and purchaser survive.

Industry spokesmen claim that a new law is unnecessary because there are laws existing which, if presently enforced, would not permit deceptive packaging and labeling. It should be pointed out this industry fought for these meager regulations behind which they now seek to take refuge.

It is indeed strange that during the 5 years that the problem of deceptive packaging has been under consideration by the Congress of the United States, there has been remarkably little discussion of the basic issue.

Consumers asking for the legislation have said, "We can't compare prices." Industry spokesmen, opposing this legislation have said all manner of things, but on this main issue what they have said comes out to nothing more than, "You can."

Strangely enough the packaging industry has discovered, since this legislation was introduced, that the American shopper possesses an

astounding ability to calculate. One cannot help but wonder why this unusual phenomenon, which now wins great plaudits from the industry and has been the subject of some of Madison Avenue's most eloquent prose, was not discovered at an earlier date.

Somehow or other our council has been looking for years for the walking mechanical calculator which Madison Avenue pictures as the everyday occurrence.

It must seem strange to you that the congressional hearings on this legislation do not reflect any of these wizards. It certainly would appear logical that the massive packaging industry could have purchased at least one of these aberrations. Surely their vast resources could have put one of these beings together if they existed.

We would be more than pleased if the average person were to meet the picture of the full-page ad which the Scott Paper Co. placed, which hailed the American housewife as—

The original computer \* \* \* a strange change comes over a woman in the store—

Read the ad—

The soft flow in the eye is replaced by a steely financial glint; the graceful walk becomes a panther's stride among the bargains. A woman in a store is a mechanism, a prowling computer \* \* \* jungle trained, her bargain hunter senses razor sharp for the sound of a dropping price \* \* \*.

We cannot help but wonder whether Scott Paper Co., instead of producing the gorgeous ad, could not have produced a miracle woman. We would be interested in one. We could duplicate the miracle with our American ingenuity. Or is it possible that this is part also of the great deception of the American consumer?

Yes, we challenge anyone to go into the store and determine, from the following, which one of the cookies are the best buy for the money, rapidly.

Here is a brief list and there is a larger assortment in any super-market I have been in lately:

	Weight	Price (cents)
Vanilla wafers.....	12 ounces.....	39
Cracker Chatter.....	9½ ounces.....	49
Oreo.....	1 pound.....	49
Do.....	11 ounces.....	39
Do.....	6½ ounces.....	25
Ginger snaps.....	1 pound.....	43
Assorted sugar wafers.....	6½ ounces.....	31
Sugar wafers.....	9½ ounces.....	41
Merri rolls.....	7½ ounces.....	49
Swiss rolls.....	7½ ounces.....	49
Butter cookies.....	7 ounces.....	25
Pride Assortment.....	11 ounces.....	39
Lorna Doone.....	10 ounces.....	43

We could have brought you concrete examples of the nature of the perpetual deceit being perpetrated but we regret the variation and variety would require us to bring you more truckloads of merchandise than this committee room and many others in the building could hold. If you go from commodity to commodity, which the average household needs daily, the story is the same. It is indeed alarming that the con-

sumer is ever more burdened by the merchandise which he needs to live being loaded unnecessarily by packaging and marking, whose only intent is to defraud rather than to assist the purchaser.

The burden which the packaging industry is intent on placing upon the consumer is unfair, unjust, and unreasonable. This industry seems hellbent upon destroying the priceless ingredient of effective competition in the marketplace, which is free and rational consumer choice.

We believe firmly that in this action this industry is undermining the American economy. When the consumer cannot compare prices he is unable to make free enterprise do its job.

We believe in this economic system.

We believe it should not be destroyed.

We believe that this system distinguishes us from nondemocratic nations.

We believe that the passage of this legislation is essential to the survival of the free market.

Gentlemen, we believe Congress has a heavy responsibility.

We do not believe that it is either just or fair or in the national interest that any industry should be able to dictate to the American consumer, which means all of us.

We believe that this is a road to destruction for our free enterprise system. A little control such as is suggested in this legislation will do much to protect the free marketplace and the ideas and ideals which we all hold dear.

We earnestly hope that you will speedily pass this legislation on to the House of Representatives. We sincerely hope that this long postponed, positive action which the American consumer so urgently demands and so devoutly wishes for will be speedily forthcoming.

This legislation will begin to bring some small measure of sanity into the evermore perplexing marketplace.

More importantly the Congress has been preoccupied during the last several years with legislation to improve the lot of the poverty stricken. What point is there to appropriate millions to lift up the conditions of the poor when on the other hand they will be the ones who are the most defrauded and the most disadvantaged in the marketplace, by virtue of the fact that a far larger share of their meager income is devoted to the marketplace.

We know that men of good will, regardless of political outlook, will want to preserve our economic system, our economic health, and our economic well-being.

We hope this Congress will not be found wanting in the protection of these American ideals, hopes, and aspirations.

Our council wishes to congratulate this Congress on finally coming to grips with at least one of the urgent needs of the consumer. We urge you to see to it that this well deserved and positive conclusion be reached here and now, by passing legislation and making it effective immediately upon passage.

Thank you, gentlemen.

Mr. Moss. Mr. Springer.

Mr. SPRINGER. Turn to page 10, Mr. Reuter. Suppose you make all of those weights 12 ounces and left the prices the same, just for an assumption. Would you know which one was the best buy?

Mr. REUTER. I would think so.

We believe that the average housewife is not looking for a particular brand, especially if "Johnny" who has seen a particular advertisement on TV is not with her. She is interested in trying to get, if she possibly can, the most for her money, and not necessarily a particular type of cracker.

The fact of the matter is this type of deviation makes that completely impossible for her.

Mr. SPRINGER. Well, take Oreo. Oreo is 1 pound at 49 cents, 11 ounces at 39 cents, 16½ ounces at 25 cents. Now this goes from 4 to 8 to 12 to 16 ounces. This legislation would simplify that.

Mr. REUTER. I am not so sure this legislation does that at all, because it does not so spell it out.

Mr. SPRINGER. That is what we know is going to happen. Maybe 2 ounces.

Mr. REUTER. I don't know whether this will happen with crackers. I don't know whether this will happen in each particular situation. I presume that the industry will be called in and the matter will be discussed.

Our experience is that under those circumstances the industry normally does not get hurt too badly.

Mr. SPRINGER. Let me ask you this, Mr. Reuter: Is there anything going to affect price in this legislation?

Mr. REUTER. Our opinion is that in the long run this will be very beneficial to the consumer. We do not hold—and I think an examination of, for instance, the packaging industry magazines would indicate—that some of the horrendous stories about the cost of extra machinery just are not borne out by facts.

The fact of the matter is that most industries——

Mr. SPRINGER. That is not my point. There is nothing in this legislation that sets the price of the product is it?

Mr. REUTER. No.

Mr. SPRINGER. Suppose you had these 12 ounces as an example and this would say 12 ounces at 39 cents. Suppose he made these three for 65. Two for something else, aren't you back at the same figure you talked about?

Unless you control price you do not control what you call confusion.

Mr. REUTER. I want one thing. I want some constant by which the person can make a rational judgment as to how he will get the best buy.

Mr. SPRINGER. Were you here when Mrs. Peterson testified?

Mr. REUTER. No; I am sorry.

Mr. SPRINGER. Bear with me just a minute, Mr. Reuter.

This still does not break the fractions down. You can price this any price you want to and you will still not come out in a better situation.

Mr. REUTER. I agree that the businessman is free to price as he sees fit. I do however, say that if we get some sort of standardization in packaging that we will be able to give the woman who goes into the store some rational basis on which to make a judgment.

I am not suggesting that it will be absolute. I am, however, suggesting that anything we do to help her will be a far cry from what we have now.



Mr. SPRINGER. You are not going to reduce the number of products, are you?

The probabilities are that Campbells Soup line is still going to have 71 lines.

Mr. REUTER. I know, but when she compares the Campbells Soup product of a certain size to the soup product of the same size of another company, or some sort of a rational size by which to compare, she will have something to go by which she does not have now.

Mr. SPRINGER. Well, I have been trying to have my wife figure this, she cannot do it, and I gave this to Mrs. Peterson and she was completely floored.

In the minority report they said, "Here is an example of what would take place," and I asked her if she could solve this one. Consider two Government standardized 8-ounce packages of different brands of potato chips. The retailer can price the first of these brands at two for 17 and the second, three for 25. Can you quickly give me a calculation of which of these two is the best buy?

Mr. REUTER. Yes, sir. I would assume offhand—I did not take it down—that the three for 25 would be the better buy.

Mr. SPRINGER. By how much?

Mr. REUTER. By a fraction.

Mr. SPRINGER. What is your fraction?

Mr. REUTER. A very small fraction but there is a fractional difference.

Mr. SPRINGER. Now this is the very thing you are presented with. I had to take my pencil and figure it. I could not figure out what it is. It comes out one-sixth of a cent. Suppose you put on here two for 17, three for 25 or four for 32 or 33, so you still come out to one-sixth of a fraction. There is nothing at all to prevent this same thing from happening, Mr. Reuter.

Mr. REUTER. I would agree, but I did not indicate that it was my thinking that this bill would cure all evils. I do, however, suggest that it will help us somewhat along the way we need to be helped. The proliferation of foods makes this necessary. We have not had in many a year any changes to meet the revolution that everybody talks about in this packaging industry.

It is time we did. And the fact of the matter is what essentially the opponents are saying is we are prepared to make all the changes in the world to baffle and foul up the air, but for God's sake, permit us to keep on doing this in ever greater volume.

This just does not make sense in this world of ours.

Mr. SPRINGER. Right after World War II, you had roughly 2,000 things in the ordinary store. You have about 8,000 now as I understand it, and it is my understanding that by 1975 you are going to have 15,000. This proliferation is going on, whether we have this bill or not. I am not undercutting what you are talking about, but I am not getting testimony from the consumers, when you pin this down, that you will not get this proliferation. I want to congratulate you for coming here but I don't know if this is going to work out the way you think it is.

Mr. REUTER. Like all legislation, I would suggest that it is drawn by human beings with human frailties and that if we find that we

are not getting what is desirable for the consumer, which I indicated is all of us, it would seem to me that we can amend those human frailties, but I think we have to make a start in this direction.

I would suggest that some of the problems which the economy is demonstrating would indicate a need for this even if there were no consumer interests that were coming here to ask you for this legislation.

I would suggest that you have testimony before you that industry practices are questionable. I refer you to a matter put in the record which indicates how some of the largest companies behave; namely, the testimony of the National Farmers Union, which cites case after case of large industry which has gone out of its way to violate what little law there is, and I suggest if these large companies are behaving this way we ought to start pulling in the reins just a little to protect that little person who spends that meager dollar.

I want to get back to the other things I mentioned too briefly. That is, we are trying to fight supposedly, a war on poverty and we are appropriating millions of dollars for this, yet these are the people who are being most victimized by this and the fact of the matter is there is very little left to protect them.

Mr. NELSEN. Mr. Chairman, I think that without any doubt that we are all looking for an answer. There is a great difference of opinion as to how you find the best answer.

I am advised that at a conference—I do not have the details here—but administration representatives spoke in support of this particular piece of legislation and one very expert witness or participant in the conference from Amsterdam made the statement that he could not agree with the testimony that had been presented in support of this bill.

He said, "Do not make the same mistake that we made." We are departing from the concept proposed in this legislation. No doubt we could make the observation that the most efficient government is a dictatorship, if you have a good one. The same thing has also been true to the great degree in our free enterprise system where the competition has leveled out these inequities and the public finds out finally and under the terms of this bill as I view it, the way it is worded—and you may agree with me that it is too severe in some of its applications—that we would be putting in the hands of authorities power that would go far beyond anything we have ever done before except in the area of drugs where the public health is involved.

But under the terms of this bill as I understand it, it goes pretty far.

Mr. REUTER. The only thing that bothers me, Mr. Nelsen, about some of the testimony here is the very companies who are so violently opposing the legislation in part or in toto when they go, not to the Soviet Union or a dictatorship, not to Amsterdam or Holland, but just across the Canadian border and put their products on Canadian shelves, are prepared to do some of the things in Canada which they refuse to do in the United States. They tell you the cost is prohibitive. Why in the United States and not in Canada?

I agree with you we do not have all the answers or even come close to having all the answers. But I would suggest that the meager

forces at the disposal of organizations like mine are not able to muster the kind of information, the kind of research, the kind of forces that have been presented to you on the other side.

I would, however, beg the committee to take a really close look at some of these happenings. The very identical companies, behaving quite different in a different country, so perhaps the motivation is the question, not the technical details which they are presenting.

This is one of the things that bothers me, you see, that a large concern will do one thing in the United States and another thing in Canada. Obviously you cannot have it both ways. They want it both ways. This bothers me. I do not pretend to have all the answers. I think that I have expressed my doubts. I have tried to be less sure.

Mr. SPRINGER. Do you have uniform packaging in Canada?

Mr. REUTER. Not in absolute terms, but there are requirements far beyond our requirements here.

Mr. SPRINGER. Do you know anything about a country that does have uniform packaging?

Mr. REUTER. No, I do not. I have not researched it enough.

Mr. SPRINGER. We had testimony from only one person. It is true our people in this country are competing with other firms. Kellogg's, as they have testified have a large packaging industry in South Africa. They also have a plant of approximately the same size in Mexico. Wage standards are approximately the same. But it cost them 51 percent more to package in South Africa than in Mexico. Almost all of this is due to wage cost increase. Because of difficulty in packaging in uniform sizes and they have it in South Africa.

When we get this kind of testimony which can be proved by figures it cannot be disregarded. You see all of us can have opinions about whether this will work or not, but when a company has had experience over a period of years and comes in with these figures, we cannot just set those aside.

Mr. REUTER. No, but I would suggest that we get some reliable economists who have been working in the consumer field to give you expert testimony as to whether or not the labor costs in these situations are really the determining factor in terms of prices. I have some doubts about this. I did not come here as an economist. I came here to represent an organization that has a definite point of view which was approved by the organization.

I would, however, suggest that it might be quite useful not to relate apples to pears.

Mr. SPRINGER. They already put their figures in the record if we want them. They cannot lie about this to a committee like this.

Mr. REUTER. I am not suggesting they lied. I am merely suggesting you are comparing apples and pears when you compare labor costs to selling price. You indicated that there was a relationship to the selling price. I am not doubting that that may be so. I merely am suggesting that it might not be. I merely am suggesting that I would want to be shown that the selling prices related to labor costs and other factors. I would want to know what the margin of profit is. I would want to know what the tax structure is.

There are a great many questions as an economist that I would ask before I accepted this company's answers so readily.

Mr. SPRINGER. If you are doubting the credibility of that company I could not rely very much on your testimony. I believe your testimony is in good faith, everything you said here and I believe what the Kellogg people said when they came here. They have a reputation and to fool this committee would be dynamite.

Thank you.

Mr. Moss. In making this request I want to preface my remarks so there is no misunderstanding.

I am not challenging the good faith or truthness or accuracies of the reputations of the Kellogg Co. I was not present the afternoon of their testimony, but it seems to me that we should as a committee request detail on that. It is my judgment that there could be many factors in a highly mechanized operation bearing upon labor costs that could represent governmental policy apart from policies tied to uniformity of packaging and until we have a total picture of what those factors are, I think it is very difficult to make an appropriate evaluation of the claims.

I think that almost any witness could, upon certain hypothesis, come up with answers or prognostications, that could be alarming to the committee.

I would like to ask, that the committee staff be requested to secure from the Kellogg Co. what would be in a sense a comprehensive statement of all the factors considered in making the comparison between the plant operation in South Africa and the plant operation in Mexico.

Mr. SPRINGER. I think it would be a good idea to get this substantiated. I questioned them to some length about it to be sure we were not making a mistake and they clearly understood the evidence they were giving to the committee so there was no misunderstanding about this.

But this is the only evidence that we have in this record of a comparison between a country which has uniform packaging as proposed in this bill, by weights, and a country which does not have it.

That is the only thing we have in this record thus far.

Mr. Moss. I have also requested my own State government to supply information on the number of package standards required by law in California. But I do know that for many years California has imposed certain minimums on certain types of commodities. This goes back prior to or during my service in the State legislature which is 18 years ago.

I think that might be helpful to this committee.

I want to thank you for your appearance.

Mr. REUTER. Thank you.

Mr. Moss. We will now hear from Mr. John A. Gosnell, general counsel of the National Small Business Association, accompanied by Mr. Lloyd Skinner, president, Skinner Macaroni Co., of Omaha, Nebr.

Gentlemen, I would like to express on behalf of our colleague, Congressman Glenn Cunningham, his regrets that he could not be here personally to introduce you to the members of the committee.

**STATEMENTS OF JOHN A. GOSNELL, SECRETARY AND GENERAL COUNSEL, NATIONAL SMALL BUSINESS ASSOCIATION, AND LLOYD E. SKINNER, PRESIDENT, SKINNER MACARONI CO., OMAHA, NEBR.**

Mr. SKINNER. I am sorry, too.

Mr. Moss. You may proceed.

Mr. SKINNER. Mr. Chairman and gentlemen of the committee, my name is Lloyd E. Skinner. I am president of the Skinner Macaroni Co. of Omaha, Nebr., and also past president of the National Macaroni Manufacturers Association.

To give you some idea of the size of my company so I won't be misrepresented, we employ 125 people in our plant and about 25 in the office. We have about 37 retail salesmen and we use about 40 brokers.

I am appearing here today as chairman of the board of trustees of the National Small Business Association of Washington, D.C.

I have twice testified against this bill, in April of 1963 and again in May of 1965, not because I am not in sympathy with the objectives of the bill but because of the grave doubts about the apparent lack of understanding of the economic considerations involved, as well as the potential impact upon small business and the consumer.

I have closely followed the testimony relating to this legislation. I have carefully studied all of the evidence produced. I have examined the marketing situation with respect to my own industry, and I have not been able to verify the existence of sufficient consumer deception and confusion to justify the legislation under consideration.

I would like to observe also that all through the hearings the general tone surrounding the discussion of this matter appears to cast industry on the one hand and consumers on the other in roles which are basically antagonistic and incompatible.

This is certainly not a realistic view, and in fact misrepresents the attitude of the food manufacturer and processor. The truth is that the patronage of consumers is absolutely essential—but this hinges on a number of factors which include price, quality, packaging, class of advertising, class of distribution, manner of display, type of promotion, and general reputation of the product.

I wish to point out with great emphasis that these are not independent elements of food marketing—they are interlocking mechanisms of the competitive process, and it is impossible to treat one phase of this chain as though it could be manipulated and recast to fit a theoretical or idealistic notion of merchandising reform.

In addition to these considerations it must be remembered that the paramount consideration of any business enterprise is to stay in business and there are a great many concerns in the food industry with high quality competitive products which have exactly the same idea.

I would venture to assert that at least 95 percent of the huge volume of food items sold in this country today are beyond serious criticism with respect to display of price and weight, and general packaging practice. The competition between these items is so keen that the slightest disruption of the manufacturing and distributing process by regulation or otherwise can cause a chain reaction of serious proportions.

This legislation proposes to transfer from management to Government bureaucracy some of the most critical and costly decisions with which management is faced. There is no room for mistakes or delays in this area. Lack of knowledge of the market, ignorance of cost factors, and unawareness of the competitive pressures can put a company out of business as quickly as anything I know, and yet it is seriously proposed here to give bureaucracy control over these vital decisions.

I would like to point out with great emphasis that this legislation does not deal with offenses which as a matter of public policy clearly ought to be prohibited by general law. At best we are talking about matters of personal opinion—about what kind of a label can be easily understood by a consumer of the lowest mentality, about the fair display of relevant factual information.

The implication of much of the testimony here is that most consumers are fools, which you will agree is not the case. There is no question but that this legislation would put Federal bureaucracy in complete control of the size, the weight, the pictorial matter and the copy on every food package.

My own company by any standards is a relatively small business, and yet we have over \$300,000 invested in packaging machinery. Any deviation from the standards for which this machinery is designed could result in disastrous expense. I was amazed to note that the Secretary of Commerce suggested that it might be desirable to provide some sort of advance clearance of package labeling and design.

This is the most impractical idea I have ever heard advanced. Anyone who has ever had any experience with Government knows that this process entails 6 months to a year's delay, to say nothing of the expenditure of many thousands of dollars in trying to convince some official why it is necessary to do things in a particular way—whether it be to meet competition, to satisfy the psychological preferences of the consumers, to reduce manufacturing costs, or the necessity of staying within the performance limits of automated machinery.

I wonder if anyone has stopped to think that the idea of seeking Government authority in advance before making a vital business decision is absolutely inconsistent with some of our most fundamental and cherished American traditions.

Advance Government permission is the Latin system—nothing can be done without a Government license. Unless I have been misinformed all these years I have been under the impression that we are dedicated to the proposition that, within reasonable limitations, the American citizen is free to do as he pleases, and that if he transgresses the law he must be tried and proved guilty of a specific offense.

This legislation proposes to deal with merchandising ethics which are matters purely subject to personal opinion. What kind of adjectives will be regarded as likely to mislead?

What kind of pictorial matter leads to a false conclusion about the product? What is a proper relation of price to weight?

How full is a full pack when you produce a number of food products of different densities and shapes which inevitably will reduce in volume as a consequence of transportation?

Furthermore, it certainly cannot be argued that these considerations are of such gravity that public policy demands advance clearance by

the Government. Such a contention would be little short of ridiculous.

With respect to the packages used by our company, we clearly display the weight of each product contained therein so there can be no mistake about the weight of the product that is purchased by the consumer.

Our packages do have a certain uniformity. This is not at all due to merchandising plans but instead is a result of practical necessity. Our packaging machinery will adjust the size of packages to a limited extent and within a very narrow range. We are thus compelled to market the full line of pasta—that is, spaghetti, macaroni, et cetera—in packages of similar size.

In view of the fact that shapes and density vary from product to product, the degree of “fill” is slightly different in each case, and for this reason we take great pains to display the weight of the contents in figures of unmistakable size. I can assure you that any significant change in package size is almost prohibitive in terms of cost, and changes in package dress represent a major cost item of serious proportions.

With runaway inflation threatening the economy, the committee is to be commended for probing into the additional costs of manufacturing products that would result if certain “product standards” are set by the Federal Government. Here are realistic estimates as to how my costs could rise.

Assuming weights are established for macaroni products on the basis of 8, 12, 16 ounces and up, and assuming that the 5-ounce egg noodle product is retained, these basic changes and additional costs would be forced upon us:

1. In cut goods where we have one basic machine handling the 7- and 12-ounce and 2-pound carton line, it is our opinion that, due to the variation of density of products, we would have to install a duplicate machine to offset expensive changeovers. Machines are built to take specific size dimensions. When there are changes in dimensions of carton, it takes 2 to 3 hours to change over. It is therefore more economical to invest in a new machine. The cost of this investment would approximate \$34,500, including additional space of 650 square feet for the machine.

2. In the case of our poly line cut goods, we would need an additional machine at a cost of \$25,000 since all volumetric fillers are tailor made to product weights. Approximately 50 more square feet of floorspace would be needed for packaging. This would total \$25,500 for the floorspace and packaging machine.

3. In the case of long goods in our poly line, there would be an additional cost of formers, et cetera, of approximately \$1,000 for changing to 12 ounces.

4. In addition to the above, we must consider the results of the added weight on our skids. Our capacity for high-rise stacking of pallets could be limited, thus reducing storage in our warehouse department by 10 percent. This in turn could force the expansion of our warehouse facilities.

The alternate to this would be to install more rail racks at a cost of approximately \$25,000. Those are racks which we put our pallet load on.

Presently we are working toward further standardization of cases and packaging by dimensional size so that we can go to more palletization. If we are forced into these proposed packaging changes, it would eliminate this program which we feel is saving thousands of dollars in distribution costs.

5. Assuming that all of these modifications were made to meet new standards, we also would find it necessary to expand the packaging department area to maintain any semblance of our existing efficient operation.

The least expensive approach might be to build an addition to our building. This would probably cost us \$100,000 at this time. This expansion would not be warranted on the basis of productivity but rather would be dictated because of the dimensional changes in the packaging and weight changes.

Thus, at the minimum we would be forced to spend \$86,000 for equipment and space alone, and expansion of the plant facilities would cost another \$100,000. Another cost factor, difficult to determine, is the "downtime" of these packaging machines, as we do not have enough sales to keep these machines operating 90 percent of the time.

Our machines presently operate about 90 percent of the time. If we were to add two more machines, they might operate from 40 to 50 percent of the time.

For these reasons, it is estimated that our costs would be increased 1 to 2 cents per package to comply with the changes in "standards" described above.

This additional cost that would be forced upon our firm would make it even more difficult for us to be competitive and thus retain the relatively small share of the market we now have.

The impact of this bill unquestionably will be far greater on the small firm. Should standards be set, as this bill proposes, the ability of major firms to retool or purchase machinery or equipment is related to their ability to finance such retooling and purchases.

The smaller firm on the other hand, and especially in light of today's tight money market, will be seriously handicapped, and unable to retool in time to maintain even its very small position in the industry.

If standards are established, many small firms may go out of business, and the already high concentration of business among a few companies will further increase.

Studies by both the National Commission on Food Marketing and the Senate Judiciary Subcommittee on Antitrust and Monopoly indicate that a relatively few firms dominate many of the fields in grocery manufacturing.

The latest available statistics reveal that there are 207 companies in my own particular industry. The four largest firms account for 31 percent of all sales; the next four largest command 16 percent of the market. A total of only 50 firms account for 91 percent of the entire sales of our industry. Thus, 157 firms are left with only 9 percent of the market.

We are concerned with those 157 firms and their ability to finance and to retool when there are backlogs of orders for machine tools in some industries from 18 months to 2 years.

Can there be any doubt that the larger company placing the larger order and with a quadruple A credit rating will receive precedence



when orders are placed for new machinery made necessary by the adoption of "standards" under this bill?

According to the report of the National Commission on Food Marketing:

High concentration is found almost everywhere. The four firms achieving the largest sales volume in each dry grocery product category usually account for more than 50 percent of total domestic sales.

For example, it is estimated that the four largest manufacturers in 1965 sold 95 percent of the baby food, and more than 90 percent of the soup, more than 55 percent of the coffee, 75 percent of the cake mixes, and 65 percent of the shortening.

Among the exceptions are pickles, jams, jellies, and confectionery products, but the tendency toward high concentration generally prevails.

Appendix A (see p. 882) gives the concentration ratio in several areas of grocery manufacturing. This table indicates the preponderant number of small firms in our industry that may be drastically penalized by the enactment of this legislation.

Such ratios of concentration confirm that the "standards" established under this bill would tend to favor the larger companies because of their greater production capacity and high automation.

Few small firms could afford the cost of numerous trips to Washington to participate in the long-drawn-out "standards" hearings that would follow enactment of this bill.

The committee is urged to examine this proposed legislation in light of current congressional discussions concerning changes in the tax laws now allowing a 7-percent investment credit for new machinery and equipment.

According to Treasury Department sources, it is the larger firm, not the smaller firm, that has utilized the investment credit provision. We must assume that this is because of the small firm's inability to raise capital and partly because of its low income.

If this committee were to approve the proposed labeling-packaging legislation much of the equipment now being used by small firms could become obsolete. We urgently request this committee to ask for a ruling from the Treasury whether companies presently using depreciation guidelines could take an immediate deduction for equipment becoming obsolete.

What would happen to their other equipment that is on the guidelines since the cost of replacing the obsolete equipment would be much greater today? What allowances would be given by Treasury in the company's tax return?

Mr. Chairman and gentlemen, many distinguished witnesses have fully covered these points, and I do not wish to belabor the issues. But in concluding I wish to emphasize a few undeniable facts which ought to be conclusive.

First, you can review this record from one end to the other and you will find no evidence of any kind which establishes that the subject matter of this legislation is of sufficient gravity or of sufficient volume to justify the exercise of Federal authority especially in terms of advance clearance.

Second, it is my opinion that this legislation, if passed as proposed, can impose an unnecessary price burden on consumers amounting to between 15 percent and 20 percent.

Third, the pressures of present Federal regulation are gradually forcing the production of food into the hands of the giant corporation.

The regulatory burden on research and development in terms of endless bureaucratic entanglement and expense is making it more and more prohibitive for the small manufacturer to stay in the food business. His only recourse is to sell out to the large competitor.

I believe I have demonstrated to this committee that I believe in fairness to my customers in terms of quality, price and packaging. I firmly believe that I must adhere to this policy in order to stay in business. But I also insist that in this close margin business any extensive meddling with management decisions in this area can very quickly put me out of business.

Furthermore, I am convinced that it is impossible to regulate matters of ethics which are purely matters of personal opinion, and I think it is most unwise and impractical to attempt to do so.

I appreciate the opportunity to appear before this committee. (Appendix A referred to follows:)

#### APPENDIX A

*Concentration ratios in manufacturing industry 1958<sup>1</sup>—Report by the Bureau of the Census*

1958	Companies	Percent of value of shipments			
		4 largest	8 largest	20 largest	50 largest
Meat packing plants.....	2,646	34	46	57	65
Concentrated milk.....	149	50	60	73	90
Ice cream and ices.....	1,171	38	48	59	69
Canned seafoods.....	229	47	58	73	86
Cured fish.....	77	50	60	81	98
Canned fruits and vegetables.....	1,347	29	39	55	67
Dehydrated fruits and vegetables.....	130	45	66	82	98
Pickles and sauces.....	637	35	48	62	76
Flour and meal.....	703	38	51	68	85
Rice milling.....	61	43	64	84	99
Flour mixes.....	109	75	86	94	98
Cane sugar, refining.....	16	69	88	100	-----
Chocolate and cocoa.....	26	71	84	98	-----
Shortening and cooking oil.....	66	49	75	97	99+
Margarine.....	22	62	86	-----	-----
Flavoring.....	498	55	67	78	87
Macaroni and spaghetti.....	206	25	41	64	87

<sup>1</sup> Report based on 1958 data due Sept. 12, 1966.

Mr. SKINNER. Mr. Gosnell, would you like to say a few words?

Mr. GOSNELL. With your permission, Mr. Chairman, I have before me "Technical Study No. 10," prepared by the National Commission on Food and Marketing, dated June 1966.

On page 170 of this document there appears a couple of paragraphs relating to consumer protection which I would like to have entered in the record following Mr. Skinner's statement.

Mr. Moss. We will receive the material for the committee's consideration.

Mr. GOSNELL. It relates to the jurisdiction of the Federal Trade Commission and the Food and Drug Administration.

Mr. Moss. I think that has been gone into extensively in other testimony. We will receive it for the files of the committee.

Mr. GOSNELL. I would like to make one or two brief remarks, Mr. Chairman.

I hope that this committee will give this proposed legislation a very sharp appraisal. During the last 25 years, within the realm of my ex-

perience, to the best of my knowledge, never before has this committee been requested to grant such extensive licensing authority to regulatory authorities with as little justification in terms of reliable facts and a clear showing of necessity to the public interest.

It has never been contended that this proposed legislation is necessary for the protection or the advancement of interstate commerce. There is no legal fraud or deception involved and certainly the public health and safety are not involved. This legislation can have a devastating effect upon small business because it proposes to grant a licensing authority with respect to matters wholly subject to personal opinion.

There are no standards by which a small businessman can protect himself against inordinate delay, unreasonable and arbitrary decision, lack of understanding of reasons for business judgments, or pure prejudice against the American competitive system.

Innovation will certainly be defeated and any small businessman operating under the close margins prevailing in the food business can be greatly handicapped or even destroyed by the authority you are requested to delegate in this bill.

At a time when the country is facing grave inflationary pressures it would seem most unwise to enact legislation that will greatly increase the cost of food. The selling price of every single product and every single package that is touched by this legislation will have to reflect the additional cost of the regulatory effort.

Furthermore the cost of regulation will have to be added to the bill paid by the taxpayer. There is no possible chance that the implementation of this legislation can result in a savings to consumers or the taxpayers.

Thank you very much.

Mr. Moss. Mr. Springer.

Mr. SPRINGER. I notice here in one of your statements where you talk about the macaroni industry, in which there are how many members?

Mr. SKINNER. I have the 1963 data but my appendix contains 1958 data. We got the 1963 statistics. Just a minute and I will get 1963. There are 207 companies it says.

Mr. SPRINGER. Just manufacturing macaroni?

Mr. SKINNER. Yes, sir. The four largest account for 31 percent of the sales. The next four have 16 percent of the market. A total of only 50 of these firms have 91 percent of the sales of the industry.

Mr. SPRINGER. Then one quarter of them have 90 percent of the business?

Mr. SKINNER. That is right. They are small, very small. They are like roomers and they live upstairs, little plants of that type.

Mr. SPRINGER. If you put uniform packaging in they would go out of business, is that your thinking?

Mr. SKINNER. You are making it very difficult for them. With the financing that is necessary to buy new equipment, it would be very difficult to stay in business with this additional burden.

Mr. SPRINGER. Would this be true of a substantial part of small business all over the country?

Mr. SKINNER. Well, that is a difficult thing to answer. I have looked at my own business, because we make 19 to 20 different shapes and sizes. The largest companies make 30 to 35.

Mr. SPRINGER. How big is your company?

Mr. SKINNER. We employ slightly under 200.

Mr. SPRINGER. That would be small business?

Mr. SKINNER. I would think it would be small business compared to many food companies. We are not in the first four I will tell you that. We are in the first 50.

Mr. SPRINGER. In macaroni business you are in the first 50?

Mr. SKINNER. Yes, sir. We did \$6 million in volume. We made \$80,000 last year on that. So you know what our profits are. That is about 1 percent,  $1\frac{1}{2}$  percent, operating profit.

Mr. SPRINGER. What part of this bill would do you most harm?

Mr. SKINNER. We buy cases cheaper because of our standardization by dimension. If you go to standardization by weight and you have different density products, you are going to go up and down with different sizes of packages. So when you have to buy cases, some of them higher, some longer—I am not in the box business—I know it cost us much more money. For instance, I pack in my cartons 6 ounces of large elbows against 7 ounces of short cut elbows and I use the same carton, the same case, and I use the same equipment.

Then for instance, in shells I use 6 ounces against 7 and if we pack larger shells in those smaller packages we would have to have a bigger package and a bigger carton.

Unfortunately I have found merchandising to be a peculiar thing. I run a southern business where our consumption is less per capita than let us say New York.

I know parts of northern New York which runs 12 pounds per capita consumption. We run 5 pounds.

Mr. SPRINGER. Yearly or weekly?

Mr. SKINNER. A year. The macaroni manufacturers, the bigger ones in the East, make their stuff in pounds primarily, but if they go to Texas or Louisiana they soon find out that the woman does not want to buy that size package. If she does not use all of the package, in a southern climate she has a chance of infestation. So our package size is dictated to us by the housewife.

We have a difficult time selling even a 10-ounce package of egg noodles against a 5-ounce package. They just don't eat that many egg noodles. How we got started on 5 ounces I do not know, but that is what our package is. Somebody probably put a 6 out and did not use good quality raw material. The fellow that did use quality raw material wanted to have the same pricing on the same shelf so he put 5 ounces in his and others put 6 ounces. This is what you get into with merchandising.

We have this trouble now with a leading manufacturer. He uses a mixture of Durham wheat and farina, he mixes it, two-thirds to one-third.

Mr. SPRINGER. I think you ought to write each member of this committee a separate letter and enclose this news release which you have. There have been a lot of people on this committee who want to know where the small business association stands, also the reasons for it, and I think it would be wise for you to write each a letter that would go to each office with this enclosure. You do not need to worry, they will read it all.

But I am afraid with no more than are here today—there are 34 members of this committee and only 4 here today. Do you think you can do that?

Mr. SKINNER. Yes, sir.

Mr. YOUNGER. I want to congratulate you and I want to thank you for your viewpoint for a practical operation. That is what we need.

Mr. SKINNER. I find it, as a small company, very difficult to get financing right now and if I have to go out and do this, I will be forced to raise my price and try to cover these costs, but as I said, there are some costs that I cannot account for. Like the downtime on packaging machinery.

As I said, we are down to about four types of packaging machinery. If this bill is passed, we may have to buy two or three more packaging machines and they would only be running 50 percent of the time on one, because I do not sell enough 16 ounce—the bulk of my business is 10 ounce—so a new problem would be created.

So I would have to change my 16 ounce. I have a limited line in the 16 ounce. I can now run it on the same machine, due to the density of the product, but when the density of the product is like a large shell, that is a big item.

You cannot run that on the same machine.

Mr. YOUNGER. Also, one package won't be as full as the next and then you will be charged with deception.

Mr. SKINNER. This is not true of flexible packaging. This is true of carton packaging. You have a more difficult time adjusting size in flexible packaging. I can go an inch more or half an inch but I do not have machines that will go 2 and 3 inches more.

They have not come up with them in the packaging industry as yet. Packages are kicked out at 94 a minute, so you know there has to be a certain amount of uniformity by dimensional size.

I am trying to make that clear, that the manufacturer has this problem. You wonder why the big, little, all of us are in here at these hearings. At the Macaroni Manufacturer's Association meeting we held, we all talked about the Hart bill. We opposed it unanimously because we all realize we are working toward dimensional size, and this bill leads us to weight size here. That is the difficulty.

And we have kept our cost down by going on the dimensional size route, and so have the big manufacturers.

Thank you.

Mr. NELSEN. Referring to the weight size, let us say that macaroni is being packaged in 16 ounces or whatever it may be, all uniform weights. If that be true, there would be a still greater proliferation of packaging sizes, would there not be, because of the fact that there might be one manufacturer that has a lighter texture than another, for example, and more. I think this has been used in the Wheathex for example, where the manufacturer puts more air into the product, which makes a lighter texture.

Mr. SKINNER. Changing the density of the product?

Mr. NELSEN. Therefore, you could not put the same wheat in the original box, so if you are required to stay with a uniform weight, you then would have to have a larger box.

Mr. SKINNER. That is right.

Mr. NELSEN. You would have to have another line, wouldn't you?

Mr. SKINNER. Yes, sir; you need another line. It is difficult to know how many more lines. We pack these items and as I say, 7, 10 ounces. We have one line, we bought a small company back in Vir-

ginia last year and they had a 12-ounce machine, and we had to go out and buy another packaging machine because the one we bought was in poor shape to pack that 12 ounces. What we did was to pack a 12- and 16-tube, but I want to tell you it cost us.

We had to go to the packaging machine manufacturer and ask them to build such a machine that would handle this thing, and we have been a year and one-half in getting delivery on it.

Mr. NELSEN. Another example. I bought some cereal, breakfast food, corn flakes type of thing. I got a good bargain in a big box. It has become soggy because it was standing in this carton, so I found my bargain was not a good one, and I would have been better buying a smaller size that I could use up in a shorter time.

Getting to the price, testimony earlier today referred to 12 for \$1, or something like that. Do you mark the price on your package?

Mr. SKINNER. No, we don't mark the price on it, because most grocers are against you marking the package. This would simplify things, but every man that buys this merchandise feels it is his privilege to put on the price he wants to sell it for.

Mr. NELSEN. Then if we are going to attack the 12 for \$1, that would be in the retailer's end of it?

Mr. SKINNER. That is right.

Mr. NELSEN. And other statements that were made relative to the yellow on gold on the label, now, it is my understanding that the authorities presently require that labels be marked in a readable manner, and if labels are being used that do not do this, at this time they are in violation of existing law.

The thing that continues to amaze me is the fact that we hear repeated testimony here asking for authority to do what we already can do and are not doing, and I just fail to get the point that by passing another law on top of one we already have—which is not thoroughly before us—I do not quite understand how we are going to get a better enforcement by passing another law to make something illegal that already is illegal.

Mr. Chairman, I want to thank the witnesses for very fine statements, and we are sorry that Mr. Cunningham could not be here today. I am sure he regrets it, also.

Mr. SKINNER. I am sorry he is not here, too.

Mr. MOSS. I have one comment I would like to make.

You refer to licensing authorities. There is a section of the bill where the licensing authority is mentioned.

Mr. GOSNELL. I meant it provided for advance clearance.

Mr. MOSS. Not precisely licensing?

Mr. GOSNELL. No; not precisely.

Mr. MOSS. Under no definition of law does it provide for licensing?

Mr. GOSNELL. That is right, but it does provide for clearance.

Mr. MOSS. We are not seeking here to impress licensing.

Mr. GOSNELL. I understand that.

Mr. MOSS. I want to thank you gentlemen.

It is my understanding that we will ask Mrs. Sarah Newman to go over until tomorrow at 10 o'clock. Until then the committee stands adjourned.

(Whereupon, at 5:10 p.m., the committee was recessed, to reconvene at 10 a.m., Thursday, September 1, 1966.)

## FAIR PACKAGING AND LABELING

THURSDAY, SEPTEMBER 1, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

This is a continuation of the hearings on fair packaging and labeling bills.

Our first witness this morning is Mrs. Sarah H. Newman, general secretary of the National Consumers League. We are happy to have you with us. You have been with us for quite some time, I have seen you each day. We are glad to have your testimony. You may proceed.

### STATEMENT OF SARAH H. NEWMAN, GENERAL SECRETARY, NATIONAL CONSUMERS LEAGUE

Mrs. NEWMAN. Thank you, Mr. Chairman.

I am here to represent the National Consumers League but I would like to ask permission to file a statement for the National Council of Jewish Women, an organization which is older than the league which has a membership of 123,000 in 329 local communities.

Their statement is in support of H.R. 15440 and they urge that your committee act favorably on it, and I have it here.

The CHAIRMAN. It will be included in the record.

(Statement referred to follows:)

#### STATEMENT OF NATIONAL COUNCIL OF JEWISH WOMEN, INC.

The National Council of Jewish Women, an organization established in 1893, with a membership of 123,000 in 329 local communities, has as one of the important aspects of its activities programs designed to protect the consumer. This interest goes back to 1940, when the organization at its national convention adopted the following resolution:

"To work for the adoption of essential regulatory measures: To protect the consumer in the manufacturing, labeling, and distribution of consumer goods and in the testing, manufacturing and licensing of drugs."

This resolution has been reaffirmed at all subsequent conventions.

In recent years our concern for consumer protection has become intensified because of our active participation in the war against poverty. In working with women in poverty we have become aware of the significance of this protection.

It has been estimated that food costs consume about 45% of the low-income budget as compared to 25% of the middle-income budget and even less in more affluent groups. For families with very small incomes, almost half of which goes for the purchase of food, it is extremely important to get

the best value for the money. Any waste, no matter how minimal, cannot be afforded by families on the welfare rolls, or other groups on very limited incomes.

The only way such families can purchase the most food for the lowest expenditure of their limited resources is through very careful comparison shopping. This is almost impossible today in the midst of a bewildering variety of labels with confusing weight-measurements and incomprehensible "cents off" offerings.

President Johnson, in his special Message on Consumer Interests on February 5, 1964, directed the President's Committee on Consumer Interests "... to develop as promptly as possible effective ways and means of reaching more homes and families—particularly low-income families—with information to help them get the most for their money."

Our members have accepted this challenge and are endeavoring, in communities throughout the United States, to disseminate consumer information. As an organization actively engaged in the war against poverty we work with low-income consumers who lack even the average consumer's ability to judge price and quality comparatively. But some of today's packaging practices confound even college-educated housewives.

H.R. 15440, the Fair Packaging and Labeling Bill, would eliminate much of the confusion and would remove a great stumbling block in offering equality in the market place to families who cannot afford the luxury of waste. By requiring that every package have a label that clearly states the contents of the container; by stating the net weight without any adjectives or qualifying phrases like "Jumbo", "Giant" and "Economy", this legislation will help the low-income housewife get the most for her money.

We urge this Committee to report the pending legislation favorably.

Mrs. NEWMAN. I am general secretary of the National Consumers League which since its establishment in 1899, has been concerned with the conditions under which consumer goods are manufactured and distributed.

For more than 65 years the league has been closely involved with major reforms affecting the consumers, such as enactment of the pure food and drug law, the Poultry Inspection Act, and so forth, and we are pleased to have this opportunity to appear before you on these bills which are so vitally needed to provide protection in the marketplace for the consumers of America.

First of all, Mr. Chairman, the league wishes to commend you for introducing your bill, H.R. 15440, which offers a way out of the confusion with which shoppers are faced every day.

We are hopeful that following these hearings you and your committee will report favorably a packaging and labeling bill that can be signed into law before the 89th Congress goes home.

Since 1961, when this subject before you was first considered by the Congress of the United States, the league has given a great deal of thought to the matter, and has made the enactment of legislation in this area a major part of its program.

Our decision has been strengthened by the sustained demand for such legislation which we have experienced during the last 5 years as we have appeared before countless organizations, and as we have responded to innumerable communications from people all over the United States.

May I, at the outset, make one thing clear. The league has never made a blanket accusation of intent to deceive against all members of the great industry which provides such abundance to American consumers. Rather, we have concentrated on attempting to bring some sanity back to the marketplace where chaos and confusion, generated perhaps by only a few, have been growing like the proverbial Topsy.



And where, I might add, the most high-minded and ethical members of the industry, in order to meet competition, have been gradually pushed into adopting practices which they themselves may have found distasteful.

In previous testimony before committees of the Senate, we have called attention to the conditions which we believe have been responsible for the frustration and growing discontent experienced by consumers as they try to discharge their responsibility of making intelligent choices in their daily expenditures.

We compared the confusion, obscurity, and complication of modern packaging practices with the chaos that prevailed in the Middle Ages when each country, each province, each city, used a different type of measure in trading goods.

In some degree, this ancient practice seems to have been adopted by those who supply the commodities that appear in our crowded supermarkets today.

The adoption of a uniform standard of weight and measures which brought an end to that medieval chaos, and which encouraged trade and commerce to flourish between nations, was considered a great step forward by all historians.

Further advance hailed by historians of the industrial age was the standardization of products which made possible the mass production of goods at prices accessible to a multitude of purchasers.

Yet, in 1966, the curious customs and practices of modern product suppliers, instead of leading toward greater precision and clarity in weights and measures, with the concomitant savings to producers and consumer through the benefits of standardization, seem to be regressing toward the chaos, confusion, and obscurity of those bygone centuries.

Now I hope you will not be deceived into thinking that these regressive practices are in response to the demands of consumers. I am aware that the consumer has been called king; that he has been credited with ultimate power in the marketplace; that he, or rather she, has been described as "the original computer" prowling through the jungle of the marketplace, "her bargain-hunter senses razor sharp, for the sound of a dropping price."

Let me assure you immediately, consumers are not computers, or prowling panthers—nor have they ever demanded the continually changing sizes and shapes of packages which are increasingly filling the supermarket shelves and constantly making our shopping trips not a game, but a beastly chore.

From my own experience of over 35 years as a housewife—I wrote this testimony expecting to give it last month. Since then I have celebrated my 36th wedding anniversary so I have had 36 years as a housewife—I can remember a time when shopping was much easier, when perhaps the consumer might more correctly have been called king. That was a time when you could enter a store and ask for 1 pound of rice or 2 pounds of beans. And all the careful shopper had to be on the alert for was the thumb on the scale, and the possible errors in addition.

Today, the shopper is faced with endless miles of walking, and endless examination of packages whose contents are described in glowing

terms which even the teenage newlywed knows must be heavily discounted.

No longer is it possible in a face-to-face human encounter to get the information which the intelligent, responsible shopper requires. Today's packages do not answer questions; they merely shriek at you, "Buy me." The new improved formula, the cents-off bargain, the giant quart, the gimmicky shape, the gorgeous picture, have replaced the clerk who could answer the questions.

I may sound nostalgic, but I really am not asking for a return to that so-called golden age. Actually, when self-service supermarkets came into existence they were welcomed by consumers. For one thing, in its early days it meant a financial saving.

Second, the prepackaging then was done in the usual weights to which we were all accustomed. Most commodities were still packaged in pounds, or half pounds, or even multiples thereof.

It was still possible to buy the larger size packages with confidence that those were more economical than the smaller ones. And it was still relatively easy to make rational choices between different brands or different sizes of any one brand without the use of a slide rule, a magnifying glass, or excessive expenditure of valuable time.

But in the intervening years since the self-service supermarket first appeared on the scene there have developed, in the competition for space on those crowded shelves, those practices which cry out for the legislation which you are considering today. Allow me to list the practices which cause consumers to ask for congressional action.

1. IN MANY CASES THE LABEL SEEMS DESIGNED TO CONCEAL RATHER THAN TO REVEAL THE TRUE CONTENTS OF THE PACKAGE

Take, for example, this package of candy which I have here (Bit-o-Honey). It is easy enough to see the name on the transparent bag because it is printed in dark blue on a white block. But it will probably take you a couple of minutes to find the net weight which is on here in accordance with law but very difficult to find. My secretary took 3½ minutes, I clocked her. I will send it up to you. It does not have to be done that way. On this other package the name is very prominent but so is the amount because that, too, is put on a white background which makes it stand out.

There is another bar of candy here which, again, is labeled with the weight as it should be but you can turn this around 60 times and not really find that weight unless you look very carefully. Then you will find that up here it says "net weight" with nothing next to it until you lift up the part that has been folded over and fastened.

Now, again, this is legal under our present law because it does have the weight on there and most consumers are able to tear this part back but here is the front of the package, there is lots of empty space here. Under the bill that you are considering today the weight would have to be on the front panel and the Food and Drug Administration could say in what size that  $1\frac{3}{8}$ ths ounces should be placed on the front.

One of the members of the committee, I think perhaps it was Congressman Moss, talked the other day about these metallic labels and how difficult it is to see the marking.

Now I brought a can of tunafish which has just that kind of a label on it and it has in—I guess it is a gold or yellow on green metallic, the amount which is so difficult to see that it almost fools you into thinking there is less in there than actually is.

I know this is a 6½-ounce can of tunafish. If you turn it so that the light shines on it correctly, you will see the six but you can barely see the one-half. There is no reason at all why a label should carry that kind of a contents marking which requires that the housewife who is doing the shopping, and does not have an inordinate amount of time to do it, should have to go to all that trouble to find out how much is actually in the can.

Some improvement in content marking has occurred during the last 5 years since so much publicity has been given to this practice, but it is obvious that there will always be some packagers who will not do this unless forced to do so by law—and a law which explicitly states what they have to do.

H.R. 15440 would make it possible for the FDA and the FTC to set up unambiguous ground rules which all manufacturers would have to follow, and which would make it infinitely easier for these agencies to stop the kind of content labeling I have just shown you.

2. ANOTHER PRACTICE WE HAVE FOUND CONFUSING IS DESCRIBING THE NET QUANTITY IN A WAY TO GIVE THE IMPRESSION OF A GREATER AMOUNT SUCH AS "GIANT HALF QUART" OR "JUMBO PINT"

These qualifying adjectives mislead the unwary and inexperienced consumer into thinking he's getting more than he really is.

He may have remembered from his schooldays that there is a long ton and a short ton, and he wonders is there something like a long pint and a short pint. Of course, there is not.

Is the 4½-percent dividend shown in this add—big, big, big 4½—any more than just 4½ percent? Of course it isn't. This is the kind of practice that is being adopted by people in our business community.

Mr. YOUNGER. Would the gentleman yield?

What is that advertisement of?

Mrs. NEWMAN. It is an advertisement of an interest rate by a building and loan, has nothing to do with this bill.

Mr. YOUNGER. Is this treated also in this bill?

Mrs. NEWMAN. No, it has nothing to do with this bill. I am merely using it to illustrate the fact that other parts of our business community are picking up this kind of a practice which has grown so in the food industry.

Terms like these have no measurable meaning and only serve to degrade the real meaning of established weights and measures. In my opinion, such terms should be outlawed.

3. MEANINGLESS SIZE DESIGNATION SUCH AS REGULAR, LARGE, KING, FAMILY, ETC., WHERE NO STANDARDS FOR SUCH TERMS EXIST

Take toothpaste, for example. I have two of the smallest packages I could find. You cannot find a small package of toothpaste on the shelves any more, but these are the smallest. They are both the same, they both have the same weight. One of them is marked "large" and the other is marked "medium." These two toothpaste manufacturers

label their other size tubes differently also. The first calls his 3 $\frac{1}{4}$ -ounce tube "giant," the second calls it "large." The 5-ounce tube is called "king size" by one and "extra large" by the other. Only on the 6 $\frac{3}{4}$ -ounce tube do these two agree—both use the term "family size."

Or take these five soap bars. They are all called "bath size." Under present law, soap does not need to have its weight marked at all. All five of these bars are called "bath size"—yet their weights vary from 5 $\frac{1}{2}$  to 6 $\frac{1}{8}$  ounces—almost a 10 percent difference.

In detergents—I have listed four different detergents and the three sizes with the contents in what they call "regular size", "giant size" and "king size." The "regular size" varies from 13 ounces to 1 pound and 6 ounces.

The "giant size" varies from 2 pounds to 3 pounds and 6 ounces. The "king size" varies from 3 pounds and 6 ounces which you will notice is the same as the 3 pounds and 6 ounces, which is called a "giant size" by another manufacturer. It is called a "king size" by a still different one and the "king size" varies from 3 pounds 6 ounces to 5 pounds 12 ounces.

If such size categories are going to be permitted, let's give the consumer a break. Let's not have one man's "giant" be another man's "king" as we now do.

#### 4. THEN WE COME TO THE VERY CONTROVERSIAL "CENTS OFF" PROMOTIONS

Labels with "cents off" on them are being used constantly. Since the manufacturer who prints the labels cannot tell the retailer what price to charge, or at least cannot enforce that price, he cannot guarantee that the retail price of the package with the "cents off" will, in fact, be as cheaper than before the new label.

Indeed, it is sometimes more expensive as this item from one of Bill Gold's column in the Washington Post would indicate. That column printed a letter from an Arlington housewife who reported about her favorite brand of instant coffee, and I am quoting, reads:

For months, the 9-ounce jar sold for \$1.59 at most stores, \$1.48 at one discount store.

Then came the "20 cents off" sale, during which the "regular" price was stated as \$1.89. With the 20 cents knocked off, this brought the price down to only a dime more than I had previously paid. I stopped buying it.

The other day, I noticed that the "cents-off sale" is over. At two different markets, it was priced at \$1.43, with no cents off. I stocked up. I hope I have enough to last me through the next "sale." Doesn't the better business bureau care about things like this?

Well, I am sure the better business bureau does care but the better business bureau cannot do anything about it.

We contend that since the manufacturer cannot force the retailer to pass along the reduction, it is obvious that "cents off" on the label can be misleading and deceptive—or, at best, can be meaningless.

Now we would not like to have the consumer deprived of savings if "cents off" were outlawed. There are many ways the manufacturer could pass on savings. He could issue coupons so the price on the package could stay as it always was but the coupon would entitle the consumer to the "cents off" when the package was bought. Or the manufacturer could issue a shelf card that might be put on the shelf

in front of the display of the commodity. The commodity packages themselves would not have "cents off" but the shelf card would have "cents off" and then the consumer would not be confused into believing that she was getting "cents off" when she suspected that she was not, or into wondering what the "cents off" was from.

#### 5. THEN WE COME TO DECEPTIVE SHAPES

Now here are two all-purpose cleaners. They look pretty much alike in size and if you were going along the aisles in a supermarket and you saw them with the colored liquid in, and they weren't smack up against each other so that they could really compare the size even though that would be difficult since they are not the same width, you might think that they both have the same amount in them.

This one had 1 pint 12 ounces and that is marked on the back. This one on the front is marked "1 quart," which means that there is a difference of over 12 percent between the contents in these two bottles.

Now here are two plastic bottles, one marked "10 cents off." A housewife going along quickly, since they are the same kind of commodity, an all-purpose household cleaner with ammonia—my guess is that they probably are both exactly the same thing—will be confused.

This one marked "10 cents off, giant size," in my opinion, is really a giant fraud because it contains only a pint and 12 ounces while the other one has 1 quart.

Now a housewife rushing through the "plastic pandemonium," as today's supermarket has been so aptly called, can easily be misled into buying the smaller "giant size," "10 cents off" bottle thinking she is getting the best buy.

#### 6. NOW WE COME TO MEANINGLESS "SERVING" INDICATIONS

Until an objective standard is set for a "serving," this term can only confuse and frustrate. Only after the purchase has been made and the contents of the package used does the consumer discover that the term has no meaning. Is a serving a tablespoonful or a half cupful, or somewhere in between?

I have here two cans, both grapefruit juice, both contain the same 1 quart 14 fluid ounces. On one of them there is an indication that you get seven to nine servings. On the other the label says 11 to 12 servings. I am sure that is not a lie, it depends on how big your serving is. But it is really very confusing to somebody who is trying to depend on the label to find out how many servings she might really get.

I have a package here of a rice product, it is marked "long-grained and wild rice." Now on this one package on different sides of it you get this:

Front panel, "four to five servings." Turn around, "serves four to six." They, themselves, are confused. I think that "servings" should not be permitted until we give it some real definition, like a half cup or a cup or a number of ounces.

For the inexperienced housewife this practice is particularly frustrating since there is no assurance that a package marked "serves four" bought at one time will provide the same amount when purchased at

a later period. This is because there is still another misleading practice; namely, the gradual decrease of contents in packages which appear to be the same size as formerly.

In my family we like salted peanuts and a few years ago you could get salted peanuts in two size cans, a 1-pound can and a half-pound can.

By gradually changing the cans, but not sufficiently to be noticed, the large size can now contains only 13½ ounces. I looked high and low to see if I could still find a 1-pound can to see if I can show you how it compares, but they are not on the market any more. You cannot buy a 1-pound can of peanuts any longer. The 1-pound can went first to 15 ounces, then to 14 ounces and now to 13½ ounces. When it went from 16 ounces to 15 ounces the can was still the same. My guess is, although I cannot prove it because I cannot find that old can, that this is a new size can.

Now we have been hearing during these hearings from many representatives of industry opposing this bill on the ground that it would cost the consumer a great deal because changes in package size are terribly expensive, according to these industry people.

Well, if they have changed to a new can just to give me peanuts in the largest size can in 13½ ounces instead of a pound, they have gone to an expense which they have naturally had to pass along to the consumer which I think is unjustified. My hope would be that this bill would prevent that kind of unnecessary expense.

The 8-ounce can went from 8 to 7 and now to 6¾. Here is another one which still is a 7-ounce can and it looks exactly the same as the 6¾, but this manufacturer has now come out with the 6½-ounce can and my guess is that in a very short time you will find that this other one will have gone from 6¾ to 6½.

The consumer who at one time depended on having more than enough for a party out of the large can finds that she runs out of peanuts before the evening is over. She was misled into thinking the large can still had the same serving capacity.

This constant whittling away of the amounts in packages appears in so many of the commodities on the shelves of our supermarkets that, only by stopping to read the sometimes barely legible quantity information on each separate package can the shopper be sure how much is in the package. The can which used to hold 16 ounces looks the same as today's can which holds only 15 ounces, or sometimes 14½ or 14 ounces.

I brought some candy packages in. Here are two packages of candy by the same manufacturer, the same kind of candy. They happened to both be on the same shelf when I was at the supermarket, but apparently they have decided that they are going to make a change. The price is the same. I am well aware that this bill has nothing to do with price, but the price is the same on both.

This package has 13 ounces; this other package has 12½ ounces. Now if I had been buying this package for a long time and knew that it had 13 ounces and had once ascertained that, I would not, every time that I went to the supermarket and saw the package looking exactly the same, check it to see if I was still getting 13 ounces. But you just about have to do that if you really want to know how much you are getting.

Now here it is the same manufacturer and also two packages of the same commodity, milk chocolate peanuts. The old package is a slightly different orange from the new package but otherwise they look the same, they both have "special offer" on them, they both have the same commodity. The older package has 8 ounces, the newer one has  $7\frac{3}{4}$  ounces.

Again it happened that the retailer still had some of the 8-ounce packages, and he had them on the same shelf as the new  $7\frac{3}{4}$ -ounce package.

I was talking to a retailer from Richmond, Va., who has three or four supermarkets and he said to me, "I wish you would get that bill you have been working for passed in the Congress."

I said, "What makes you so interested in it?"

He said, "Well, for many years we have sold a full pound jar of jelly and preserves which has been a good seller in our market, and we felt that it was a good buy for the consumer and it was a good item for us to carry." He said, "At one time that particular manufacturer went to 12 ounces instead of the one pound jar and we resisted putting that on our shelves and went elsewhere to get another brand of one-pound jars of jellies and preserves, but the one-pound jar is disappearing completely so we now have to have 12-ounce jars."

Well, the other day when I went looking in the supermarket to see what is going on in the jelly and preserves picture, I found that the 12-ounce jar now is disappearing and the 10-ounce jar is beginning to take over.

I can recall when I first testified on deceptive packaging that I received a vehement letter from a mother because baby food which had regularly been sold in  $4\frac{3}{4}$  ounce jars had suddenly been changed to  $4\frac{1}{2}$  ounce jars.

This seemed like a very small difference—only  $\frac{1}{4}$  ounce—but it represented more than a five percent reduction. My son called my attention to his favorite ale which quietly and unobtrusively went from 12 ounces to  $11\frac{1}{2}$  ounces.

The only reason he has noticed it is that he has lived with me long enough to know that reading a label very carefully is very important, and he was highly indignant.

Now if you multiply these reductions by the 8,000 different items on the shelves and by the number of times a year that each item is purchased, it represents a whopping big total in hidden price increases.

Furthermore, it undermines consumer confidence in the whole marketing process. No longer is it wise to rely on apparent package sizes. Each individual item, each individual brand, must be checked for content each time a purchase is contemplated.

Public confidence is important to all of us. Whether or not it is justified, if the public generally has reservations about the intent of the packaging industry, that industry must change to remove those reservations. The public, I assure you, does have such reservations today.

We are not even sure of the ingredients in the package and this can be terribly important to people who are allergic or who might be on special diets.

I have a package here of tea. It is marked "bonus pack free, one-third more." Well, I didn't bother to check what the package before

this one was like and whether you are truly getting one-third more but the thing that interested me was that over on the side in writing which is not parallel with the front label it says, "Consists of equal parts of freshly prepared tea and malto dextrose."

Now, equal parts makes me realize I am not really getting one-third more tea, I am getting one-sixth more tea and one-sixth more malto dextrose. This is legal and if you take time and read everything on the label turning and twisting the package you can find out what you are getting. I don't think it ought to be made that difficult. We come to another practice which really annoys and frustrates the consumer and that is the multiplicity of packages in odd and fractional sizes.

Although price is not the only factor which guides the careful shopper, it is a highly significant one, particularly today when so many brands of the same commodity overflow the market shelves. And also at a time when the food costs are going up continuously.

Why should it be necessary to compare 1 pound 4 ounces at 31 cents with 3 pounds 1 ounce at 63 cents: and 5 pounds 4 ounces at \$1.23 with 16 pounds 1 ounce at \$3.79 before deciding which is the most economical way to buy a detergent?—Tide.

To do it efficiently you would have to make four complicated divisions. First, you have to change all these contents into ounces and you find with the 1 pound 4 ounce package you have to divide 20 ounces into 31 cents. You divide the 3 pounds 1 ounce—49—into 63 cents. You divide the 5 pounds 4 ounces, which gives you 84 ounces, into \$1.23, and then 16 pounds 1 ounce, which is 257 ounces, into \$3.79.

I don't know how long it would take any of you gentlemen on the committee, but it is almost impossible for the ordinary housewife pushing her cart along the aisles, with one eye on her tugging toddler and the other on her carefully drawn up shopping list. I would like to show you a couple things here that make it easier for her to do it, except she has to learn how to use a sort of slide rule computer. But if she were able to do it she would have discovered that buying the next to the smallest size would have given her the most for her money.

This is a far cry from the day when you thought you could get economy purchases if you bought large economy sizes.

Today's consumers are getting pretty tired of this nonsense. They are tired of playing games like hide-and-go-seek to find the net weight, or, will the real economy size please stand up. Spending the wage earner's income is a serious business, and a real responsibility. Whether the confusion and deception in the marketplace are deliberately planned or not—it does exist, and neither the industry nor the regulatory bodies have been able to stop it.

Surely it is not too much to ask that packages go back to even ounces and, wherever possible, multiples of a pound. The argument that this would be a great cost which would have to be passed on to the consumer leaves me pretty cold.

I would not be in here urging that you pass this bill if I thought that this bill would result in a great cost to consumers.

Manufacturers are changing their packages with increasing frequency. The cost of those changes are naturally being borne by the consumer. But did consumers ask for these changes? Not very likely, since for the most part the changes manufacturers make, make



shopping more and more difficult. No consumer in his right mind would ask for changes which result only in confusion and expense.

For example, last year—I have this package which has been discussed here—Wheat Chex cereal changed from a 1 pound, 2 ounce package at 39 cents to a 14½-ounce package at the same price—an increase of 8 cents per pound (about 20 percent), plus the questionable bonus of a fractional weight to deal with.

Their contention is that it made a more tender Wheat Chex product. Well, I think they could have made a more tender one by just going from 1 pound 2 ounces to a 16-ounce package. It would have given the consumer more for her money, she still would have had a more tender product and she would have had a much easier chance of knowing what she was getting.

At the same time that this cereal was being changed, Chex-Mates cereal went from a 9-ounce package to one containing 7⅞ ounces. I don't know why they could not have gone to an even 8 ounces, but they didn't. They kept the package the same size and you could put 8 ounces in that package very easily.

The new colored package—the only thing new about that package was the color—was about 15 percent more expensive than the old one.

Shredded wheat went from an even 12 ounces to 11 ounces in the same size package, at the same price, at an increase of more than 8 percent. If it costs money to make changes, let's give the consumer a break. Let's outlaw changes which make buying decisions more difficult.

Now it does not always cost more to package in those countries where sizes are standardized or weights are standardized. I know this has concerned your committee a great deal and I think one should be concerned about the costs of any legislation.

I would like to show you something that came to my attention. Here are two cans of Libby's tomato juice. I opened the cans and measured them when I got home to make sure that I was not being fooled. In this can, in pretty large lettered numbers which you perhaps can see from there, it says 20 ounces. On this other can in much smaller type it says 1 pound 2 fluid ounces which means 18 ounces. I took the cans home, I measured them. They are both a No. 2 size can. Let me tell you what the difference is. This 20-ounce can is a can which is sold in Canada. Canada has a much stricter labeling law than we do. In Canada they could not put the contents on in this small size, it has to be in at least this size [indicating].

Apparently, also in Canada, they could not put it up in 18-ounce contents in this No. 2 can; they have to put it up in 20 ounces, and they did.

Interestingly enough, I divided the number of ounces into the cost on each can, and while there is only a small difference, the 20-ounce can in Canada, packaged in a country where there is much stricter regulation of weights and measures, is cheaper per ounce than the 18-ounce can sold in the United States where we have a much laxer regulation of the weights and measures.

So while I think it is terribly important that your committee find out what the actual situation is in those countries where there does exist, in my opinion, better legislation covering this, I do think one

should also find out what is it costing the consumer in those countries to buy the same product.

I also think that you should be asking how much the industry is now spending on changes. The possible changes that might have to be made under this bill, nobody can give you accurate figures on. What those costs will be are only guesses because nobody knows what those changes will be.

Actually, I think the industry people who have been here have a much poorer opinion of the kind of practices they are carrying on than I do, because they seem to be saying that they would have to be making tremendous changes right away for many of their items and the costs would be terrific.

I don't think this is true. I think by and large they are doing a good enough job so that the number of changes that would be required under this bill would be relatively few and that many of them could be made without adding to the cost.

What's more, we would stop this constant changing for which consumers are paying every single day without having a chance to say whether this is a change they really want.

The National Consumers League has always believed that consumers have not only rights, but responsibilities. One of the rights is the right to the information which will enable them to make rational choices so as to get a dollar's worth for every dollar spent.

Among the responsibilities is that (1) they use the power of their expenditures to reward the ethical, efficient producers of consumer goods and services; (2) that they discourage wasteful purchases which bolster inflation; and (3) that they obtain maximum satisfaction in exchange of earnings.

Consumers spend over \$80 billion a year on these packages. If part of that money is wasted, if consumer confidence is undermined, the whole economy is affected. Just as an informed citizenry is essential in a free political system, so is an informed public essential to a free market system. Both systems break down when large groups of citizens are unable to make wise decisions for lack of sufficient information.

Opponents of this legislation have tried to raise all sorts of bugaboos in order to defeat it. The Congressional Record recently carried a copy of an article which appeared in the Washington Star on July 31 repeating some of the arguments against these bills.

I ask permission to insert in the record of these hearings a letter which I sent to the editor in response to the article, and which was printed on July 21, 1966.

Congressman Halpern was good enough to have placed this letter of mine in the Congressional Record of August 11 and I have a copy of that here.

The CHAIRMAN. Without objection.  
(Article referred to follows:)

[From the Washington Star, July 21, 1966]

#### TRUTH IN PACKAGING

Sir: Mr. Richard Wilson's fear that "we could end up with shelves full of G.I. type packages" if the Truth-in-Packaging Bill were enacted would vanish into thin air if he himself did what he suggested housewives should do—read the hearings, reports, and debates on the bill. He repeats the tired old argument

that the "federal regulators" will standardize commodities as to "size, content, quality and, eventually, price" and will push down the "road to ruin" the great industries that play such an important part in our national prosperity.

I suggest to Mr. Wilson that he read the bill a bit more carefully so that his fears may be dispelled. Nowhere in this bill is there any provision which would give the regulators any control as to "content, quality, or price." Instead, passage of this bill would once more return to our free enterprise system the need to compete on content, quality, and price rather than by relying on the constantly changing and costly variations in shapes and colors of packages to entice the buyer.

The so-called "wide discretion" for the regulators which the bill sets up is merely authority that the FDA or FTC may, upon evidence that help is needed for consumers to be able to make rational decisions among the thousands of items on our supermarket shelves, call a hearing at which industry and consumers can present their points of view. If such hearings show that changes are necessary, the tried and true procedure for development of voluntary product size standards is provided for. No voluntary product standard hitherto in effect can be changed. Industry will have ample time—18 months—for development of the new standards, and due regard under this bill must be given to such factors as costs involved in any recommended changes. American industry which boasts that its main desire is to give the consumer what she wants should welcome this opportunity to really learn what consumers feel they need, to help them in their daily purchases. Mr. Wilson's fears that these federal agencies will assume czar-like powers can hardly be justified by the long and well-documented history of their cooperation with industry, both under Republican as well as Democratic administrations.

Mrs. America should, indeed, read the hearings and debates. Then even more housewives would articulate their demands for legislation to help them get a true dollar's worth of value for every dollar they spend.

SARAH H. NEWMAN,  
*General Secretary, National Consumers League.*

Mrs. NEWMAN. This legislation would not result in GI standardization of packages and autocratic control over content, quality, and price. This legislation will merely return to our free enterprise system a competition based on content, quality, and price rather than limiting that competition to constant and costly variations in shapes and colors of packages to entice the harassed buyers.

The National Consumers League supports both S. 985 and H.R. 15440. The only changes we would recommend would be to make mandatory some of the provisions now left to the discretion of the regulatory agencies.

As was stated by a former Secretary of Commerce, Luther Hodges, with respect to an earlier packaging bill introduced by Senator Hart, this legislation—

would not only serve to protect the interest of consumers throughout the country, but would also serve to protect and advance the interest of manufacturers, packagers, and all other business elements, participating in the distribution of consumer products.

Advertising Age last year carried an article entitled "The Voice of the Consumer Rises in the Land." Permit me to quote from it:

The voice of the consumer is rising in the land. It cannot be stilled. It should not be stilled \* \* \*. If business doesn't listen to the consumer—and take positive action in his behalf—then the consumer has no recourse but to turn to government.

Mr. Chairman and members of this committee, we turn to you. We urge that you report out favorably H.R. 15440 in its present form or strengthened in the manner we have suggested, and that you do so in ample time for this bill to be enacted into law during this session of the Congress.

The league is not alone in asking for this legislation. Besides those proponents who have appeared before you during these hearings I know of many organizations representing hundreds of thousands of housewives who look to you for affirmative action on this bill.

I know the General Federation of Women's Clubs, with which organization we cooperated back in the days when the Food and Drug Administration was being considered as a possible setup in the Federal Government, has endorsed it.

The Federation of Women's Clubs has gone on record in support of this legislation. the New Jersey Consumers League has gone on record in support of this, the National Council of Jewish Women whose testimony I presented today, Farmers Union, the National Rural Electric Co-op Association, B'nai B'rith Women, the Cooperative League of the U.S.A., the National Association of Advancement for Colored People, the National Housewives League of America, the National Council of Senior Citizens with its hundreds of thousands of members, the National Council of Negro Women, and the Federation of Citizens Associations of the District of Columbia—all these are organizations that I know are supporting this legislation and looking to you for action on it in this session of the Congress.

I want to thank you very much for the opportunity to present our statement.

The CHAIRMAN. Thank you, Mrs. Newman.

How many members did you say were in the Jewish Women's organization?

Mrs. NEWMAN. 123,000 in over 300 localities. You know, they are divided into local chapters.

The CHAIRMAN. And they support the statement you put in the record?

Mrs. NEWMAN. They support H.R. 15440; they did not recommend that it be changed.

The CHAIRMAN. How many are in your organization?

Mrs. NEWMAN. We have about 15,000.

The CHAIRMAN. 15,000.

Mr. Moss, do you have any questions?

Mr. Moss. Mr. Chairman, I have no questions.

I do want to express my appreciation for the highly informative presentation that was offered.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mrs. Newman, I think you have an excellent statement of your position and I am glad to have this in order to get a broad picture of somebody who apparently is working on behalf of the consumers.

You have spent a lot of time since I came in talking in terms of labeling. Before this committee, at least at this point, there is no dispute, that I know, about labeling.

I think the labeling should be improved but it is a thing which does not cost very much. That is a minor factor in the overall question of cost. That might be proved different in other testimony but that is my understanding.

I think those statutes with reference to labeling are good. Labeling had to be handled very carefully and I think we did a little of this in the cigarette business last year.

Somebody was not satisfied with the words on the package.

Now the part that has bothered me is when you come to this question of packaging. That raises lots more serious questions than some people have dealt with, especially people who came here in the first place who have made no study. No one thought that there was any question of cost involved.

We have had a steady stream of witnesses here who indicate that there would be a significant raise in the price, almost immediately, of their product which could not be justified.

What is the position of your proof on this if the committee comes to the conclusion that those are the true facts of this situation?

Mrs. NEWMAN. I think that the witnesses who have appeared have given estimates of what might possibly happen if this bill were to do the worst to that industry that it possibly could.

I don't see how they could give you any accurate kind of estimates. Now there was a witness yesterday who said if he had to change to—I am not sure, 8 and 16 ounces for spaghetti, it would cost him so much. Now that is accurate and that I think you can accept as a possible cost if it were demanded, if the regulation were promulgated that he change to 8 and 16 ounces from whatever he now uses. But we don't know that regulations like this would be promulgated.

Mr. SPRINGER. Mrs. Newman, let's get this straight, because we have to assume that you are probably going to do for the administrator very similar to what you do in other countries which have packaging laws. They cannot assume anything else.

Mrs. NEWMAN. OK. Let's take these two cans. Suppose the promulgation of a regulation was made that you could only package tomato juice in increments of 4 ounces. Is it going to cost Libby's any more to package a 20-ounce No. 2 can for the United States than it costs them to package it for Canada? Presumably they already have the machinery.

I think there is a lot of flexibility in packages so that even if you were to standardize sizes you would not have to go to as much expense as some witnesses have indicated they might have to go to.

There might be some expense.

Now, for instance, that same witness yesterday testified about expense he had gone to in buying a new machine for spaghetti last year. Well, there might be some expense under regulations promulgated by the agencies if this bill were to pass, but I think that before you could decide that that expense would make this bill undesirable you would have to compare it with the expense that the companies now are undergoing in making changes, because you know you can't—

Mr. SPRINGER. Mrs. Newman, let me ask you this: Have you had any experience in this field? Have you had any experience in the field of packaging?

Mrs. NEWMAN. No, sir; except in buying packages.

Mr. SPRINGER. I don't think you are an expert in this field, I think you are an expert in what you are talking about there because you made a study of that. In this question of cost this committee ultimately has to come to a conclusion whether the facts those people have related to us are true.

Mr. Moss raised a question yesterday regarding Kellogg. You heard that testimony, you have been here most every day.

Mrs. NEWMAN. Yes, sir.

Mr. SPRINGER. This is something we have to face up to as a matter of fact. We cannot assume that it is not going to happen and then it does happen and we get all this clamor about the raise in prices, because of the bill we sent out to the floor and passed. We have to accept this responsibility.

Have you had any experience?

Mrs. NEWMAN. I would oppose this bill if I believed that it was going to result in higher cost to the consumer.

Mr. SPRINGER. That is what I wanted to know. Then I have that on the record.

Now I am not trying to be picayunish here but in those two cans there you said that the one which had 20 ounces in it was cheaper than the one that had 18 ounces.

Mrs. NEWMAN. It is a very little difference.

Mr. SPRINGER. Slightly cheaper.

Mrs. NEWMAN. Slightly cheaper. The 20-ounce can came out to 0.085 per ounce.

Mr. SPRINGER. 0.085?

Mrs. NEWMAN. It was 17 cents for the can. The 18-ounce can which was 2 for 31 came out to 0.086.

Mr. SPRINGER. All right. That is not very much.

Mrs. NEWMAN. It is not very much per ounce but we are not buying 1 ounce of tomato juice.

Mr. SPRINGER. You are a consumer. Isn't there a standard which every company follows that as the number of ounces goes up in a can of that size that it is cheaper?

Mrs. NEWMAN. No, sir. It used to be that way, Mr. Springer. I guess you were not in the room when I gave the list of packages of Tide detergent and it was the second from the smallest package which was the cheapest.

Now it used to be that you could buy the economy size with confidence.

Mr. SPRINGER. Mrs. Newman, you have the same quality product in the same can, there is no variation of quality. Now as I understood it, these detergents that you were talking about were not of the same quality.

Mrs. NEWMAN. No, sir. I used the detergents two times, once to show you the difference in giant, king, and regular. On page 9, I used different size packages of one detergent which happened to be Tide detergent, and these were different sizes of the same detergent manufactured by the same company with the same name and the next to the smallest size was the cheapest.

Mr. SPRINGER. Are you talking about per ounce?

Mrs. NEWMAN. Sure. How else would you figure it? It was the best buy because it was the cheapest per ounce. Now, it was all the same detergent, it was all made by the same manufacturer, it was all called Tide. There is no reason to believe that a small package of Tide has something in it that is different from a large package of Tide.

The commodity was the same and it varied from a 1 pound 4 ounce to a—what is the biggest package here? Sixteen pounds one ounce.

Mr. SPRINGER. Mrs. Newman, I am going to run that down. We had one example like this before and ran it down.

Mrs. NEWMAN. I would be very glad for you to check my arithmetic.

Mr. SPRINGER. I will take your word today.

Mrs. NEWMAN. I will be very happy to check.

Mr. SPRINGER. This is what I want to do. Now the question which every witness has raised who has come in here to testify for this bill is confusion. Now when we first talked about this Mrs. Peterson finally got into the question of confusion. We thought they were coming in here on deception but finally when I put up some of these examples she said, "That is not exactly what we are doing, we are talking about confusion in the marketplace."

Now, do you think this is going to reduce the confusion if we will get away from talking about deception and go back to discussing confusion? Do you think it is going to reduce confusion?

Mrs. NEWMAN. Yes; I do.

Mr. SPRINGER. Now you were a housewife probably before World War II or about that time?

Mrs. NEWMAN. Oh, I have been married for 36 years and I have had a family of varying sizes from small to large and back again to small.

Mr. SPRINGER. As I understand, we had about 2,000 articles on the shelf in the ordinary supermarket then. We now have about 8,000. Now that has been a part of the confusion, has it not, three or four times as many articles on the shelves to buy?

Now by 1975, it is my understanding in the ordinary supermarket, if we are going to continue expanding, there will be 15,000 items.

Mrs. NEWMAN. It is a horrible thought, isn't it?

Mr. SPRINGER. This is the American free enterprise system at work. Now, do you still think this is going to reduce the confusion of the ordinary person who goes in?

Mrs. NEWMAN. I think if we could get some standardization of weights it would reduce the confusion.

Mr. SPRINGER. Maybe your position is right and I am not going to contradict it if you believe that is true. But if the supermarket is going to get bigger and instead of 31 potato chips on the market you are going to have 50 potato chips on the market—which is reasonable, as I understand it, if the economy expands with the new ideas, we probably might have as many as 50.

Now, you still think that you are going to reduce the confusion?

Mrs. NEWMAN. Yes. I think we should do what we can to reduce the confusion and also the expense. Now I know this bill does not affect retailers at all but the retailer is faced with added costs. For instance, you had the other day the different sizes of salad oils, cooking oils. When the retailer has to get additional shelf space to accommodate a 10-ounce bottle a 12-ounce, 14-ounce, 16-ounce, 18-ounce, 20-ounce bottle—it is an added expense. I am down to a family of two now but I have had a family of three children who now are married and are no longer living at home, two of whom were growing boys, and I know the different needs of a family. Sometimes you want an 8-ounce bottle and sometimes you want a gallon bottle depending on the size of your family and your needs at the time.

But, honestly, we don't need 10-ounce, 12-ounce, 14-ounce, 16-ounce, 18-ounce and 20-ounce sizes in salad oils. There is not enough difference so that one family can only comfortably use a 10-ounce one and another one a 12-ounce.

Now the supermarket operator—

Mr. SPRINGER. This has nothing to do with products.

Mrs. NEWMAN. No, sir; except insofar as the price reflects the amount of extra shelf space which a supermarket operator has to have in his store to have all these various sizes.

Mr. SPRINGER. Won't this confusion continue in the same way if you multiply these as two for so much, three for so much, four for so much, or we will say the cheap half dozen, that if this is what is going on as he manufactures this and, in other words, he says we will give you the cheap half dozen, half dozen of these for \$1.10 all in a package instead of putting them in singles.

Mrs. NEWMAN. At present we are confused by the odd weights and the odd prices. If we eliminated the odd weights the confusion would be cut in half.

Mr. SPRINGER. Just one other question. As I understand it yesterday and the day before when the AFL-CIO was in here they were not advocating standard sizes. They were only advocating standard weights. Is that your position?

Mrs. NEWMAN. If I had to set a priority I would say standardization of weights is the most important. I think in addition some standardization of sizes could also be helpful, but it is not as important.

Mr. SPRINGER. There you have 18 and 20 ounces. If that were every 2 ounces that would still be legal, but, for instance in the cracker industry we had quite a bit of testimony as to how much cheaper it was to use four cracker boxes all the same size but you had different weights in them. To that it is my understanding the AFL-CIO is not opposed.

Mrs. NEWMAN. I am not opposed to that either and if any Food and Drug Administrator called a hearing and wanted to standardize packages or weights in such a way that I would be convinced it was going to add to the cost to the consumer, I as a consumer would oppose it. If this is a setup that would happen, if during some of these hearings when new regulations are being considered consumers have the chance to come in with industry to consider whether they are for or against the new regulations, no consumer is going to be for regulation which is going to cost them more.

Mr. SPRINGER. I thank you for your testimony.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

You speak of standardization. Most of the proponents of this bill emphasize that this bill does not call for standardization.

Mrs. NEWMAN. I am not afraid of that word. I know with some people it is considered an objectionable word. I think we could get standardization of weights and measures under this bill. I don't think we would immediately become completely standardized. I think you know, as well as the industry people, that this kind of thing would not happen overnight, not only because of the provisions of the bill, but because Government doesn't move that rapidly.



But I am not afraid to say that there would be some standardization. I hope there would be some standardization of weights under this bill.

Mr. YOUNGER. One other question.

If I understand you correctly, you would be opposed to any standardization that would cause the price of the product to increase. Is that correct?

Mrs. NEWMAN. That is correct. I would just have to have a slight proviso so that you get the whole truth of my position.

I would also want to know what would happen if there were no standardization and if costs would then go up.

Mr. YOUNGER. Would you be agreeable to an amendment to the bill that no rule or regulation regarding standardization can be effected if it would cause the price of the product to increase?

Mrs. NEWMAN. There is already in the bill, Mr. Younger, a provision that costs must be considered.

Mr. YOUNGER. No; I am not asking that. This is a prohibition, an absolute prohibition to the Secretary.

Mrs. NEWMAN. No, I would not. I think that is an unreasonable kind of thing to put in the bill.

Mr. YOUNGER. You wouldn't go that far?

Mrs. NEWMAN. Because, you see, it is so hard to determine whether this would be a real increase in cost to the consumer. It might be a momentary or a transient slight cost to the consumer with an ultimate saving. If you could write it that way so that I would be sure that the ultimate saving would be possible then I would go along with that, yes, sir; not otherwise. It is too hard to interpret.

Mr. YOUNGER. You are just a little iffy on the subject?

Mrs. NEWMAN. Because I am not sure what you mean when you say resulting in extra cost to the consumer.

Mr. YOUNGER. I am taking your word for it. You said a while ago and you put in the record that you would be opposed to this bill if it caused an increase. I just assumed that it would follow that we would put a clause in the bill, an amendment, that if any standardization regulation or rule would cause an increase in the price of the product, it would be prohibited, but apparently you don't go that far.

Mrs. NEWMAN. No, I would not go that far, Mr. Younger.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I just had one question. I am sorry I missed some of your earlier testimony.

Do you have any examples of where a larger size, which ordinarily indicates economy, absolutely ends up being more expensive?

Mrs. NEWMAN. Yes, sir, on page 9 of my testimony. I think it is page 9. I just read it.

The CHAIRMAN. That is correct.

Mr. ADAMS. If it is in there, fine.

Mrs. NEWMAN. It is in under (8).

Mr. ADAMS. Under (8).

Mrs. NEWMAN. There were several packages of Tide and the next to the smallest size was the cheapest per unit.

Mr. ADAMS. Thank you very much. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Thank you, Mr. Chairman.

In testimony on this bill some have emphasized standard size and some have asked for standard weights, and we just can't seem to reconcile the whole deal.

Here we have proposed legislation and people want different things out of the same proposal, so you can understand that we get rather confused. I must say however, you are a very patient witness. I have noticed you here for many, many days.

Mrs. NEWMAN. I am very much interested in it.

Mr. NELSEN. You mentioned giving coupons instead of cents off and on the premise that some of the retailers may juggle the price so that the cents off means nothing, but they could also juggle the price if you got a coupon, couldn't they?

Mrs. NEWMAN. Yes, but, you see, the price then is on the package and it is usually the price that the retailer has been charging unless he gets brandnew merchandise and reprices everything. As to the confusion that results, I have stood at checkout counters and heard people say "But you didn't give me my cents off" and the checkout person will say, "But your cents off is already in there."

Let us permit the retailer to put his price on and let us permit the manufacturer to indicate that he is giving a discount and not tie the two any closer together than we have to.

Then, you know, if you get mad at the retailer because his price is higher than he was charging last week you can separate that from your getting mad at a manufacturer who puts something on a label which he cannot really produce for you.

Mr. NELSEN. Getting to the label, you mentioned that the Canadian label has larger print than our label in the United States. This is something that is well within the authority of enforcement agencies in the United States.

Mrs. NEWMAN. No, sir, I am sorry I disagree with you.

Mr. NELSEN. Yes, it is.

Mrs. NEWMAN. They can only say that it must be legible and it must be conspicuous, but they cannot say, as they do in Canada, I think, it must be so many inches, or so many centimeters, or whatever they have. They cannot do that. Under this bill the Food and Drug Administration could do it.

Mr. NELSEN. Under the law I asked the question and the response was that it must be in a readable form.

Mrs. NEWMAN. But they can't say in what size under the present law. They can only say readable. What is readable to one person is not readable to another.

Mr. NELSEN. Have you complained to the Food and Drug Administration or any enforcement agency?

Mrs. NEWMAN. I have been on an advisory committee.

Mr. NELSEN. Have they said that they did not have the authority?

Mrs. NEWMAN. Yes, and I think they did at the hearings here. I am pretty sure they said it at the hearings here, too.

Mr. NELSEN. Do you have any communication stating that they do not have the authority? Is there anything on record? I have heard no such statement.

Mrs. NEWMAN. I could check through. I am sure I have heard them say it in public and I thought they had said it at the hearings here. If they didn't I think they said it at the hearings in the Senate. I would be glad to check and find that for you.

Mr. NELSEN. I would like to have that definite information if you will supply it.

(The information, when received, will be found in the committee files.)

Mr. NELSEN. Now, you have the two detergent containers or bottles.

Mrs. NEWMAN. It is an all-purpose cleaner.

Mr. NELSEN. Are you suggesting that all the bottles be straight up and down and no variation?

Mrs. NEWMAN. No, sir; I am not. I would like, and I think under this bill it would be possible, to regulate the volume in which such liquid detergents can be sold, to be 1 pint, 1 quart, one-half gallon, 1 gallon. That would help us a great deal.

Then I don't care what shape they have. They can have fascinating shapes and colors and make life very gay and charming for all of us who spend hours at the supermarket, but we wouldn't have to stop and read each bottle to find out if in truth this is only 1 pint 12 ounces instead of 1 quart.

Mr. NELSEN. Without question certain commodities could be standardized without any damage, I would guess, to anyone, but the thing that confuses me is how you will write into legislation provision for a regulation or a rule something that is going to be completely equitable and fair. We do have processes now where standardization has developed by industry cooperation with the Federal Trade Commission and it seems to me this has worked out.

I have the feeling that we have not properly exercised the machinery that we do have that would implement standardization that would not damage industry and would be in the public interest. I think the voluntary approach is much to be desired over what could be a very severe, disastrous application under this bill.

Mrs. NEWMAN. I don't share your fear that there would be a disastrous application under the bill and I do feel that under this bill there is ample opportunity not only for voluntary action on the part of industry, but, you know, they have always said that they want to provide what the consumer wants.

This will give them a marvelous opportunity. They will be able to sit down with consumers, with Government, find out what the consumer wants, and then really make the consumer king.

I don't know why they object to it. I honestly don't.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mrs. Newman. I think you have been very patient. You have been here for days waiting your turn and you have been very informative this morning.

We want to thank you for your testimony.

Mrs. NEWMAN. Thank you, sir.

The CHAIRMAN. The next witness we will have is Mr. Burditt, appearing for the Chicago Association of Commerce and Industry.

Mr. Burditt, proceed as you see fit. We are determined to finish these public witnesses today. We are going to go on in the afternoon, if necessary.

Mr. Burditt, you may proceed.

**STATEMENT OF GEORGE M. BURDITT, CHAIRMAN, WEIGHTS AND MEASURES COMMITTEE, CHICAGO ASSOCIATION OF COMMERCE & INDUSTRY**

Mr. BURDITT. Thank you, Mr. Chairman.

The CHAIRMAN. If you can summarize your statement you might do that and put it in the record or you may proceed as you see fit.

Mr. BURDITT. All right, sir.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you.

My direct testimony, Mr. Chairman, I will summarize, if I may, rather than read it directly out of my statement. It will not take, I believe, more than 20 minutes at the most for my direct statement.

My name is George Burditt and I live in Congressman Ed Derwinski's district in LaGrange, Ill. I am appearing before you this morning as chairman of the Weights and Measures Committee of the Chicago Association of Commerce & Industry.

The association has about 6,000 members, mostly small businessmen in the Chicago area. I also happen to be a lawyer and I am a member of the Illinois Legislature.

In that capacity I am also chairman of the food, drug, cosmetic and pesticide laws study commission and we are of course considering much the same material that you gentlemen are, so perhaps at least as much as anyone in the audience I admire your patience and congratulate and thank you for all of the work you gentlemen are doing in considering this bill.

Over the last few years I have had the privilege of attending the National Conference on Weights and Measures. The National Conference on Weights and Measures is in one sense a meeting and in another sense it is an organization. It is really the trade association of the State and local weights and measures officials.

The national conference meets annually to consider weights and measures problems which are mutually enjoyed by the States and by the sealers in the various cities and counties throughout the country.

One of the functions of the national conference is to draft and amend from time to time a model law and regulation which the national conference then recommends for adoption by the State legislatures and the regulation for promulgation by the State weights and measures officials.

At the present time about 20 States have the model law and about 19 States have the model regulation. A total of about 27 States have either the law or the regulation and I think there are about a dozen States that have actually both the law and regulation.

For example, Mr. Chairman, your State has the model regulation. Michigan, Pennsylvania, Virginia, Illinois, Mississippi, and Washington have both the model law and regulation. Maryland and Florida have the model law and some of the very large States—Texas, New York, California, Kentucky, and South Carolina, have the model regulations. A complete list is attached to my statement, Mr. Chairman, which with your permission I will skip reading.

The subject of the Model law and regulation is important for your consideration for at least two reasons. The first is that it shows that

States have been very active in this field which is the subject matter of H.R. 15440. The State legislatures have been active in adopting the model law. The State weights and measures officials have been very active in promulgating the regulation. A great deal of thought and planning, all kinds of conferences and meetings, have been carried on in drafting the model law and model regulation. The States weights and measures officials, who really are the administrative experts in this field, have given their best efforts to these models over the last few years.

The second reason is that the list of States which have adopted the model law and regulation is so geographically diversified throughout the country that for all practical purposes the food and commodity packaging industries are complying and are more and more coming into compliance with the model law and regulation.

As a practical matter they must do so. Not everything, of course, in H.R. 15440 is covered by the models, but a good many of the provisions appear in both the models and in H.R. 15440.

So, with your permission and in order to make my testimony as brief as possible I would like just to go through some of the provisions of 15440, those provisions in section 4, and point out to the chairman and members of the committee the similar provisions, in many cases identical provisions, which are already in either the model law or the model regulation and, Mr. Chairman, I have given to the clerk and I believe you may have copies of both the model law and regulation so perhaps it will make it a little easier for you to see just what I am talking about.

Let me start, if I may, with section 4(a)(1) of H.R. 15440 which requires that a regulation—this is the mandatory section—be promulgated to provide that—

The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor.

There are two requirements, identity of the commodity and what is commonly called the signature copy. Section 26 of the model law has those same two requirements.

It says:

\* \* \* any commodity in package form \* \* \* shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, \* \* \* and (3) in the case of any package kept, offered or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor \* \* \*

Section 2 of the model regulation amplifies that and carries it out by requiring that:

The declaration of identity shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like \* \* \*.

So both the model law and the model regulation now have in them—and these are in effect in a good many States—the exact requirement of section 4(a)(1).

As far as section 4(a)(2) is concerned, Mr. Chairman, it requires that a regulation be promulgated to provide that—

The net quantity of contents—

And this is the thing that we have been talking about a great deal this morning, of course—

(in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label if that consumer commodity is enclosed in a package.

Here, again, section 26 of the model law requires that any commodity in package form bear on the outside of the package the—

net quantity of the contents in terms of weight, measure or count.

And this has been implemented in section 6.1 of the regulation which says:

\* \* \* The declaration of identity, if required, and the net quantity statement shall appear on the principal display panel of the package.

So you see that, specifically, it is required in both the law and regulation that the net quantity statement appear on the principal display panel.

There is one further provision in section 4(a)(2) that bothers me a little because I am not sure I understand it. That is the requirement that the net quantity statement appear in a uniform location. If that means that the net quantity statement must always appear in the same place on every package, for example, in the upper right-hand corner of the label, then it would necessitate a revision, I would guess, of 90 percent of these labels which Mrs. Newman has left here on the table.

It is customary to place the net quantity statement prominently on the label, but there is currently no requirement that it appear in a uniform location, so this is a new provision of H.R. 15440 which does not appear, to the best of my knowledge, in any Federal or State law at the present time.

It would obviously involve a very substantial expense. All of the plates would have to be remade, all of the printing would have to be done over again, in order to comply with uniform location, if that is what it means. Aside from the cost I am not so sure that that is a good idea under any circumstances because it is pretty hard, with all of the multitude and variety of shapes and sizes which we have here, for example, to pick out one location which is going to be the most prominent on all labels regardless of shape.

It may be a round package or these exotically shaped, commonly called Mae West shaped, bottles. To pick out one location doesn't seem to me to promote consumer interest simply because the one location on one package might not be as prominent as that same location on another shaped package.

Section 4(a)(3) of H.R. 15440 requires a regulation to provide that—

The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) if expressed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole units of pounds, pints, or quarts.

Now, the provision in that section, Mr. Chairman, concerning whole units carries out the existing law. This is the provision of the Federal Food, Drug, and Cosmetic Act and it is the provision of the model weights and measures law and regulation.

There is an exception under most laws, I think all laws, and this has been implemented by at least Federal regulation to say that if there is a consumer practice to permit these declarations to appear in other than the largest whole units, for instance, instead of saying 1 pound 4 ounces, if consumers are accustomed to buying it in 20 ounces, this can be done, but the general rule is in largest whole units, plus a fraction.

The other provision in section 4(a)(3)(A) which is commonly called the all-ounce program, the requirement that it shall be expressed in ounces, is, of course, a new provision. This would again necessitate redesigning a huge number of packages that are currently on the shelf because it is a change from the practice of saying 1 pound 4 ounces to a requirement that the net quantity statement be expressed in 20 ounces.

Here again I am not sure that the expense which would be involved is the only argument. It seems to me that an equally cogent argument is that consumers are not going to be helped by this.

Indeed the National Conference on Weights and Measures considered this all-ounce requirement. These are the administrative officials who are enforcing these laws and who live with them from day to day. They considered the all-ounce program as a possibility.

They rejected it and I think one of the main reasons why they rejected it is that they did not think that the benefit which would accrue, if any, from the all-ounce program would be worth all of the difficulty incurred in changing it and in trying to reeducate consumers to a new system.

Section 4(a)(3)(B) requires that the net quantity statement "shall appear in conspicuous and easily legible type in distinct contrast—by" my copy says topography but I am sure that means "typography, layout, color, embossing, or molding—with other matter on the package."

This is a subject to which the National Conference on Weights and Measures gave an immense amount of attention over the last few years and there are a number of provisions in the model regulation which I would like to call to your attention.

Section 6.1, which is on page 5 of the model regulation, a copy of which you gentlemen have, the first sentence spells out really the same thing as 4(a)(3)(B).

All information required to appear on a package shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background.

Section 6.4.2 says:

The declaration, or declarations, of quantity shall be in such a style of type of lettering as to be boldly presented, clearly and conspicuously, with respect to other type or lettering or graphic material on the panel or panels.

Section 6.4.3 says:

The declaration, or declarations, of quantity shall be in a color that contrasts definitely with its background.

Section 6.6 says:

The declaration, or declarations, of quantity shall be presented in an area sufficiently free from other printing, lettering, or marking, to make said declaration, or declarations, stand out definitely with respect to the surrounding printing, lettering, or marking.

These regulations, Mr. Chairman, are currently in effect. They are new regulations and if there are packages on the table which do not comply with them I am sure that one reason is that the companies which put out these packages are currently in the process of changing.

A great many changes have been made in the last few years, but these free area provisions, and the color contrast provisions, and the size and style of lettering provisions carry out I think what is exactly the intent of section 4(a)(3)(B).

Section 4(a)(3)(C) is, of course, a very important one and this is the one, Mr. Nelsen, to which your question was directed a moment ago. It requires a regulation to provide that the quantity statement—

shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size.

As I understand that section it would require that if your principal display panel contained so many square inches of area, then your net quantity statement must be a certain specified size. This is a subject to which the weights and measures officials throughout the country devoted more time and attention than any other single section in the model weights and measures regulation.

They came out with a provision which is spelled out in section 6.5 of the model and it does exactly what would be required as I understand section 4(a)(3)(C). It says:

The height of any letter or number in the required quantity statement shall be not less than those shown in table 1, with respect to the square-inch area set forth in paragraph 6.2.3.

Section 6.2.3. is the one that defines principal display. Then table 1 which is set out in the regulation spells out specifically the relationship, a mandatory relationship, between the area of the principal display panel and the height of the net quantity statement.

If the principal display panel is less than 4 square inches, a perfume bottle or very tiny bottle, then there is no minimum.

If the principal display panel is between 4 and 25 square inches, then the net quantity statement must be one-sixteenth of an inch in height. If the principal display panel is between 25 and 120 square inches, then the net quantity statement must be one-eighth of an inch in height, and if the principal display panel is between 120 and 400 square inches it must be one-quarter of an inch in height, and if the principal display panel is over 400 square inches, the net quantity statement must be one-half inch in height.

This provision, Mr. Chairman, was drafted after extremely careful and long consideration.

Mr. Barker of your State, Mr. Lewis of Washington, Mr. Adams, Mr. Kerlin of California, Mr. Goforth of Illinois, all of these weights and measures officials who are daily charged with the enforcement and who study this as a matter of profession, are the ones who drafted this table and who promulgated it in the model regulation and who have taken it back to their home States and adopted it as the official regulation in their States.

Section 4(a)(3)(D) of H.R. 15440 requires the promulgation of a regulation to provide that the quantity statement:



shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed.

Obviously a good requirement, Mr. Chairman, because that means you can't put a net quantity statement vertically or in some other position which would make it difficult to read.

These words of section 4(a) (3) (D) are taken verbatim out of section 6.4.1 of the model regulation which requires specifically that—

The declaration \* \* \* be presented in such a manner as to be generally parallel to the base on which the package rests as it is designed to be displayed.

This to the best of my knowledge is being complied with throughout the country. It is in effect and is currently being met throughout the country. Section 4(b) of H.R. 15440 requires that—

No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) \* \* \*.

This is a subject also which has been discussed this morning and I would like to point out that section 26 of the model law currently requires that—"\* \* \* in connection with the declaration required under clause (22)," which is the net quantity declaration—

neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used \* \* \*—

and those words are further implemented in section 3.9 of the model regulation, so that currently it is prohibited to say "giant quart" or "jumbo pint," which I hope will clarify the record which was made this morning.

Mr. Chairman, that concludes my comparison of the specific provisions of section 4 with the existing provisions of the model law and regulation.

I urge you, Mr. Chairman, to consider these existing State laws and regulations which are being enforced, which are admittedly relatively new, but they are being enforced, they are being adopted in more and more States every year, and until the States have an opportunity to thoroughly enforce these laws and regulations I would urge, Mr. Chairman, that H.R. 15440 as far as these provisions are concerned not be enacted.

(The statement follows:)

STATEMENT OF GEORGE M. BURDITT, CHAIRMAN, WEIGHTS AND MEASURES COMMITTEE, CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY

Mr. Chairman and Members of the Committee: Thank you for the opportunity to appear before you today in respect to HR15440.

My name is George M. Burditt and I live in Congressman Ed Derwinski's district in LaGrange, Illinois. My testimony today is given as Chairman of the Weights and Measures Committee of the Chicago Association of Commerce and Industry. The Association has about 6,000 members, mostly of course small businessmen in the Chicago area who are vitally concerned with HR15440. I am also a lawyer and an Illinois State Representative. One of my legislative commissions is the Illinois Food, Drug, Cosmetic and Pesticide Laws Study Commission, and since I am Chairman of the Commission, I have recently been listening to testimony in this general area just as you have been.

Over the last few years I have had the privilege of attending a meeting called the National Conference on Weights and Measures. The National Conference is composed of state and local weights and measures officials who work closely with the National Bureau of Standards of the United States Department of Commerce. The National Conference—the weights and measures officials—has drafted a Model State Law and Model State Regulation on weights and measures and has recommended the Models for adoption by the several states. At the present time, the Model Law has been adopted by the legislatures of about 20 states and the Model Regulation has been promulgated by the weights and measures officials in about 19 states. About 27 states have adopted either the Model Law or the Model Regulation or both. For instance, Mr. Chairman, West Virginia has the Model Regulation. Michigan, Pennsylvania, Virginia, Illinois, Mississippi and Washington have both the Model Law and the Model Regulation. Maryland and Florida have the Model Law, and Texas, New York, California, Kentucky and South Carolina have the Model Regulation.

The alphabetical list of states which have adopted the Models is as follows:

#### MODEL LAW

Alabama	Illinois	New Mexico
Alaska	Maine	Pennsylvania
Arkansas	Maryland	Tennessee
Colorado	Michigan	Virginia
Delaware	Mississippi	Washington
Florida	Missouri	Wisconsin
Hawaii	Montana	

#### MODEL REGULATION

Arkansas	Michigan	Tennessee
California	Mississippi	Texas
Delaware	Missouri	Virginia
Hawaii	Montana	Washington
Illinois	New York	West Virginia
Kansas	Pennsylvania	
Kentucky	South Carolina	

New states are being added to these lists every year.

This subject of the Model Law and Regulation is important for your consideration for at least two reasons:

1. It shows that the states have been very active in the field which is the subject matter of H.R. 15440. The state *legislatures* have been active and the state *administrative officials* have been active. A great deal of thought and planning have gone into the very specific provisions of these Models, by experts in *this* specific field.

2. The list of states which have adopted the Models is so geographically diversified that practically any firm engaged in interstate commerce is already complying with Models.

Not everything in H.R. 15440 is already covered by the Models, but a good many provisions appear in both the bill and the Models. I would like to make my testimony as brief as possible by limiting it to the specific provisions of the Models which are duplicated by provisions in H.R. 15440. A copy of each of the Models is attached to the copies of my statement which have been distributed to you.

Section 4 of H.R. 15440 *requires* FDA or FTC to promulgate certain specified regulations. Section 4(a) (1) requires a regulation to provide that

"The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor; . . ."

Section 26 of the Model Law in almost identical language, leaving out irrelevant words, requires that:

" . . . any commodity in package form . . . shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) *the identity of the commodity* in the package unless the same can easily be identified through the wrapped or container. . . . and (3) in the case of any package kept, offered or exposed for sale, or sold any place other than on the premises where packed, *the name and place of business of the manufacturer, packer, or distributor . . .*" (emphasis added.)

This is supplemented by section 2 of the Model Regulation which provides: "The declaration of identity shall positively identify the commodity in the package by its common or usual name . . . ."

And section 403 of the Federal Food, Drug and Cosmetic Act contains similar requirements.

Section 4(a)(2) of H.R. 15440 requires a regulation to provide that:

"The net quantity of contents (in terms of weight, measure or count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label if that consumer commodity is enclosed in a package; . . ."

Section 28 of the Model Law requires that the label bear: ". . . (2) the net quantity of the contents in terms of weight, measure or count . . ."

Section 6.1 of the Model Regulation requires that:

" . . . The declaration of identity, if required, and the net quantity statement shall appear on the principal display panel of the package . . ."

These Model provisions cover all of the requirements of section 4(a)(2) of HR15440 except the requirement of "uniform location." I am troubled by this provision because I am not sure I understand it. If it means that the net quantity must appear in the same location—for example the upper right corner—on all packages, aside from the fantastic expense of redesigning the vast majority of all packages in the United States, it just doesn't seem to me to be a good idea. Standardizing the location of the quantity statement on a label was considered by the draftsmen of the Models and was rejected. Instead they require the section of the Model Regulation which relates to "Prominence and Placement" and added some carefully thought out requirements which they felt, and I certainly agree, provided the desirable degree of prominence for quality statements. I will discuss these requirements in connection with the specific provisions of section 4 of HR15440.

Section 4(a)(3)(A) of HR15440 requires a regulation to provide that the net quantity statement on packages containing less than four pounds or one gallon ". . . be expressed in ounces or in whole units of pounds, pints, or quarts. . . ." The "whole units" part of this requirement duplicates section 3.5 of the Model Regulation and also the Federal Food and Drug Administration regulations, but the requirement that the quantity be declared in ounces if the quantity is not an even pound, pint or quart is an entirely new concept. In this respect, HR15440 differs from existing federal law and I believe the laws of all states. It would necessitate redesigning the thousands of labels subject to the requirement, which can only increase the cost to the consumer. But aside from the cost, does it make sense? The National Conference has also considered this possibility—called the "all-ounce program"—and has rejected it. It doesn't seem to me that the proposal would be sufficiently meaningful to warrant such a radical change in both federal and state law and in consumer practice.

Section 4(a)(3)(B) requires a regulation to provide that the quantity statement

" . . . shall appear in conspicuous and easily legible type in distinct contrast (by typography, layout, color, embossing, or molding), with other matter on the package. . . ."

Section 6.1 of the Model Regulation provides:

" . . . All information required to appear on a package shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. . . ."

Section 6.4.2 of the Model Regulation provides:

" . . . The declaration, or declarations, of quantity shall be in such a style of type or lettering as to be boldly presented, clearly and conspicuously, with respect to other type or lettering or graphic material on the panel or panels. . . ."

Section 6.4.3 of the Model Regulation provides: ". . . The declaration, or declarations, of quantity shall be in a color that contrasts definitely with its background: . . ."

Section 6.6 of the Model Regulation provides:

" . . . The declaration, or declarations, of quantity shall be presented in an area sufficiently free from other printing, lettering, marketing, to make said declaration, or declarations, stand out definitely with respect to the surrounding printing, lettering, or marking. . . ."

So the Model requirements in this regard are even more specific than H.R. 15440.

Section 4(a)(3)(C) requires a regulation to provide that the quantity statement:

"... shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size. . . ."

Section 6.5 of the Model Regulation already provides this relationship:

... MINIMUM HEIGHT OF NUMBERS AND LETTERS.—The height of any letter or number in the required quantity statement shall be not less than those shown in Table 1, with respect to the square-inch area set forth in paragraph 6.2.3: *Provided*, That the height of the numbers of a common fraction shall be not less than one-half the dimensions shown: *And provided further*, That this section shall not apply to permanently labeled glass containers, for which see paragraph 6.7.

TABLE 1.—Minimum Height of Numbers and Letters.

<i>Square inch area of principal panel</i>	<i>Minimum height of numbers and letters</i>
4 square inches and less.	No Minimum
Greater than 4 square inches and not greater than 25 square inches.	$\frac{1}{8}$ inch
Greater than 25 square inches and not greater than 120 square inches.	$\frac{1}{8}$ inch
Greater than 120 square inches and not greater than 400 square inches.	$\frac{3}{8}$ inch
Greater than 400 square inches.	$\frac{1}{2}$ inch . . ."

A great deal of time was spent by officials all over the country on this table. For example, I personally met with the West Virginia official, Mr. Chairman, and the California, and New York, and Michigan, and North Carolina, and Pennsylvania, and Illinois and several other officials. They spent countless hours devising this table. So we already have the requirement described in section 4(a)(3)(C).

Section 4(a)(3)(D) requires a regulation to provide that the quantity statement:

"... shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed . . ."

This provision duplicates the requirement of section 6.4.1 of the Model Regulation that:

"... The declaration, or declarations, of quantity of the contents of a package shall appear on the principal display panel, or panels if there are more than one, and shall be presented in such a manner as to be generally parallel to the base on which the package rests as it is designed to be displayed . . ."

Section 4(b) of H.R. 15440 provides in part that:

"... No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if *any* qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), . . ."

Section 26 of the Model Law provides that:

"... In connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used: . . ."

And an implementing provision appears in Section 3.9 of the Model Regulation. So here again, H.R. 15440 duplicates existing provisions of state law.

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you. If you have any questions, I will be glad to try to answer them.

The CHAIRMAN. Thank you very kindly, Mr. Burditt, for your appearance. I am sorry I did not know that you were a member of the Legislature of Illinois. We would have paid you the proper tribute as

one of us who has to suffer while he serves. It is a pleasure to pay tribute to a member of an elected body.

Mr. BURDITT. Thank you.

The CHAIRMAN. I am glad to know that you are because you realize what some of our headaches are.

Mr. Adams.

Mr. ADAMS. Mr. Burditt, I particularly enjoyed your statement. I thought it was factual and to the point and I have been quite interested in the model State law, and I am particularly interested in section 1(7), which defines intrastate commerce as it applies to the act, and the only place I have found it used in the act to any degree is under section 26, which is of course the key section.

Is it not true that because of the definition of intrastate commerce and the way that it is used in the act there will be (1) no regulation in any State that does not adopt the uniform code, and, (2) that there could be a definite problem whether or not you could regulate items that come into a supermarket from outside the State?

Mr. BURDITT. Mr. Adams, as far as your first question is concerned, the fact that a State does not have the model law in its current statutes does not mean that this subject cannot be regulated. There are several States which do not have the model law, but which do have the model regulation.

Mr. ADAMS. Then pursuing that, every State that has not adopted the Model Law will create a lack of uniformity for industry within the United States.

As I remember, only 27 States have adopted the uniform law.

Mr. BURDITT. Sir, first, only 20 States have adopted the law; 19 the regulation; 27 have adopted one or the other, but in practice it doesn't follow that there is lack of uniformity.

As a matter of fact, we have far better uniformity today than we had 3 years ago. The reason is that the major States, the largest States, the largest food manufacturing States, have adopted either the model law or regulation and the result of that is that even though that law is applicable only in the State, and this goes to the second half of your question, any company which is selling in that State must comply with those laws and regulations of that State.

If I could amplify, for example, a manufacturing plant in Seattle which is canning fruit and shipping the fruit from Washington to Oregon will comply with the model law and regulation because John Lewis is going to make sure they comply in Washington, and even though Oregon may not have the model law and regulation they will still have to comply.

Mr. ADAMS. On the model law, have you had it tested as to whether or not under—as I remember it was the *Brown* case—the “original package” doctrine, that if they ship an original package into another State it cannot be regulated by that State because it is directly in interstate commerce.

Mr. BURDITT. No, sir, to the best of my knowledge there has not been a test.

Mr. ADAMS. You don't think there has been, so there is some question as to whether or not a model State law will apply if we can assume from the manufacturers who have testified that a great portion of the

items in a supermarket are going to move in interstate commerce from the point of manufacture to the retailing outlet. Second, these will stay in the original package.

Mr. BURDITT. Mr. Adams, let me say that I don't personally have the slightest doubt about that. I think you have mentioned that I had some doubt. I have none whatsoever.

A package which is manufactured in Seattle and is shipped to Portland and sits in a retail store in Portland has come to rest and there is no doubt in my mind whatsoever but that the Oregon authorities have jurisdiction over that package or a package, taking the other way, shipped from Oregon which does not comply and goes up to Seattle which has the model law, John Lewis could enforce it.

Mr. ADAMS. I may have a difference of opinion with you because of certain tax cases that have been recently decided for example in the plywood industry, but let us set that aside and leave that as a possible issue and go on to the second thing, which is that if you are in agreement, and I think you are because I followed these sections as you have gone through them, that this bill is practically identical with the model code—in fact I think portions of it have been drafted from the model code, with the exception of the "all-ounce" program—then would not the passage of this statute, and you have gone particularly into sections 3 and 4, not only implement but produce overall uniformity and remove any problem between interstate and intrastate commerce in the area of weights and measures. Would not this be a great step forward?

Mr. BURDITT. Of course that is a very good question, Mr. Adams.

First of all, as you mentioned, there are two or three differences which in my opinion are not valid.

Mr. ADAMS. I noticed only one, which was the "all-ounce" one.

Mr. BURDITT. Another one is the uniform location.

Mr. ADAMS. Depending upon the definition of uniform location which has not been defined by Federal regulation as it has by your regulation.

Mr. BURDITT. By the weights and measures officials?

Mr. ADAMS. By the weights and measures; right.

Mr. BURDITT. Perhaps, Mr. Adams, I should make it really clear, because from the statement which governed my qualifications it looks like I am a State official or city official on the document which you have. I am not.

Mr. ADAMS. I understand that. I understand that.

Mr. BURDITT. As far as overall uniformity is concerned, certainly the best way, the most effective, the quickest, the most thorough way to get uniformity is to have the Federal Government promulgate a law or regulation in any field. This doesn't apply only to packaged commodities. This is any field.

But from that I don't think it follows that the Federal Government, and, Mr. Chairman, maybe I am speaking as a State legislator now, should therefore take over all areas of regulation.

If the States are doing an adequate job, as I think they are, if they are continually progressing, if they are listening to the same kind of arguments which have been presented to you gentlemen and are acting on them, if they are enforcing the laws and regulations which they

have in those individual States, then, Mr. Adams, it seems to me that it isn't necessary for the Federal Government to act.

MR. ADAMS. Do you agree that we have less than half of the States—I guess we have a little over half—that have some kind of regulation in this. Now, to me this is a weights and measures bill and I think that the Federal Government has a responsibility with the States to go to certain minimum requirements, and I thought your testimony beautifully pointed out that these were a set of really very minimum requirements compared to the things the States are doing and that if we write in a minimum set of requirements the States can move in weights and measures regulation far beyond it if they want to adopt the model law, but we will have removed any question as far as the minimums are concerned throughout the United States, and we will have in our country, a uniform set of weights and measures.

MR. BURDITT. Mr. Adams, theoretically I think that is right.

MR. ADAMS. Practically, isn't it?

MR. BURDITT. I don't believe so, sir, for this reason.

Almost all food or a huge percentage of the food moves in interstate commerce.

MR. ADAMS. Right.

MR. BURDITT. You get back to this first question. I had frankly never heard anyone raise this question in the food industry. I am a food and drug lawyer and I hadn't ever heard anybody raise this question of food manufactured in one State and shipped for sale into the second State. It is generally accepted in the industry.

MR. ADAMS. Are you familiar with the tax cases which go into this in great detail—and have ever since about 1786—concerning the taxation of commodities moving in interstate commerce and when they come to rest, and the original package doctrine, and so on?

MR. BURDITT. Sir, I am not nearly as familiar with them as you are. I am aware there are cases along that line. In the food and drug cases as far as State weights and measure officials are concerned and the State food and drug officials are concerned they assume jurisdiction, and they have since time immemorial, of any package which is sold in that State regardless of its source.

Once it comes to rest in the supermarket in that State, and sometimes even before, when it is in the warehouse of that State, it is subject to the jurisdiction of those State officials, so because of that we now have uniformity. We have the best uniformity we have ever had.

MR. ADAMS. Is it still your position we ought not to try to improve that a little bit, on at least a minimum basis, in the States who don't have it?

MR. BURDITT. I don't think it is necessary. If you will remember, Mr. Adams, section 12 of the bill would supersede all the State laws which are in conflict. It doesn't say which are more strict or less strict. It says, I believe, which are in conflict with it.

It therefore seems to me that we wouldn't accomplish what you are suggesting. It would not be establishing a minimum which could be enforced throughout the country. This supersedes those State laws and all of the efforts that the real experts in this field have put into it, the administrative officials who live with it, would go for naught,

because they are the ones who can do it on a daily basis, who can continue to follow it.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen. I don't mean to cut you off.

Mr. BURDITT. No. As you can see, I get wound up, Mr. Chairman. Don't hesitate to cut me off any time.

The CHAIRMAN. No; I didn't mean to cut you off.

Mr. NELSEN. Perhaps my question will permit you to continue with the observation you were making.

On this uniform packaging that you mentioned where you have uniform packaging and uniform laws in many of the States already, now, if you are packaging in your State under this uniform packaging procedure you then would be also complying with the other States that are involved, would you not?

Mr. BURDITT. Yes, sir.

Mr. NELSEN. In interstate commerce you would be in conformity then, would you not?

Mr. BURDITT. Yes, sir; you certainly would be, Mr. Nelsen, and I would go even further and say that I have not heard of any instance of a package which complies with the model law and the model regulation being held in violation of another State's law which State does not have the model law or regulation.

In other words, those States which haven't taken the formal action of promulgating the model law and regulation, many of them are using it as a guideline.

Mr. NELSEN. Did I understand you to suggest that the bill not be passed? Did you say that?

Mr. BURDITT. Yes, sir; I feel very strongly that there is no need for the bill.

Mr. NELSEN. I will join with the chairman in thanking you for your statement. It has been very informative and we are pleased to have had you here as our witness.

Thank you.

The CHAIRMAN. I would like to know how long your outfit has been working at bringing about uniformity.

Mr. BURDITT. Sir, the Association of Commerce and Industry in Chicago has a special weights and measures committee which has been in existence for about 3 years. The model law and regulation do not have anything directly to do with the association which I am representing this morning.

The model law and regulation are drafted by the National Conference on Weights and Measures, which is the trade association, as it were, of the State and local weights and measures officials, so it is an official body.

The CHAIRMAN. When were these drafted originally?

Mr. BURDITT. I beg your pardon.

The CHAIRMAN. When were these drafted originally?

Mr. BURDITT. I can't answer that, Sir. My own personal knowledge of the model law and regulation goes back only to 1957. I know they were in effect prior to that time.

The CHAIRMAN. 1940?



Mr. BURDITT. I am sorry, sir, I can't answer, but that is an answer that is readily available and I would be glad to submit it to you in writing.

The CHAIRMAN. That is all right. If you have been working on achieving uniformity this long yet we continue to have all this confusion, then you haven't gotten along very well then, have you?

Mr. BURDITT. Sir, you asked about the original promulgation. The particular sections which I was talking about, for example, section 6 of the model regulation, a very substantial revision of section 6 was adopted by the national conference in 1964 as a guideline.

The following year after further consideration by all the State weights and measures officials it was put into effect as the official section 6.

The CHAIRMAN. Two years after that and we still have this confusion. It doesn't look like they are very efficient then, does it?

Mr. BURDITT. Let me say that passing another law might not be any better. What we may need, sir, is better enforcement or more time to come into compliance.

The CHAIRMAN. Maybe you will agree we need something.

Mr. BURDITT. In some instances it is quite obvious we do.

The CHAIRMAN. Thank you very kindly for coming and, as I said, again I want to apologize to you for not knowing that you were a member of the legislature. We would have introduced you appropriately, and we were glad to have you and have the benefit of your views.

I think you presented them very well.

Mr. BURDITT. Thank you, sir. You introduced me more than appropriately. I appreciate your courtesy.

The CHAIRMAN. Mr. Nelsen said you have our sympathy.

Mr. BURDITT. Thank you.

The CHAIRMAN. Our next witness will be Mr. Daryl D. Milius, senior vice president, J. J. Newberry Co., representing the Variety Stores Association.

**STATEMENT OF DARYL D. MILIUS, SENIOR VICE PRESIDENT AND  
GENERAL MERCHANDISE MANAGER, J. J. NEWBERRY CO.; AC-  
COMPANIED BY PHILIP W. SCHINDEL, EXECUTIVE DIRECTOR,  
VARIETY STORES ASSOCIATION**

Mr. MILIUS. Thank you, Mr. Chairman.

The CHAIRMAN. I don't know how far we will get.

Mr. MILIUS. In the essence of time we are going to try to make our points brief.

The CHAIRMAN. Fine. Your whole statement will be carried in the record then.

Mr. MILIUS. I am Daryl Milius, senior vice president and general merchandise manager of the J. J. Newberry Co. I am accompanied here today by Philip W. Schindel, who is our executive director of the Variety Stores Association.

The statement we are submitting is on behalf of the Variety Stores Association whose 750 member companies operate over 8,500 popular priced, general merchandise stores over America, in all 50 States, and

we will attempt to summarize this presentation but we certainly would ask that the full statement be included in the record.

The CHAIRMAN. It will be included.

Mr. MILLER. We appreciate this opportunity to amplify and update the testimony on packaging legislation which our association, particularly Mr. Schindel, our director, gave at the Senate committee hearings last year.

By way of introduction I think we should explain that we are here because in our judgment retailers are affected by and will have a great stake in the packaging legislation in spite of the retail exemption.

We feel this is true because of the simple fact that many of the retailers, some of them quite small in size, do feature private-brand merchandise.

An even more important reason is the role and function of retailing in our total economy. We certainly do not purchase every item that is presented to us. We take great pride in the fact that we are experienced, skilled buyers of merchandise and we also have a great responsibility to our customers.

As retailers our interest is attracting customers into our stores and in order to accomplish this we must insure to the best of our ability that our customers are receiving a good value with complete satisfaction. The responsibility remains whether or not the merchandise is packaged or whether it is a famous national brand.

The customer shops in the store for a choice. If in its judgment Congress decides that the consumers need the assistance of a packaging law, we can only ask today that it be a reasonable, practical, and workable law. Our statement will basically cover four points.

The Staggers bill and the Senate-passed bill to us in the general merchandise field—I am speaking of the general merchandise field—represent a fair, reasonable, and workable consensus position.

Two. The unobstructed movement of merchandise in interstate commerce we feel is essential to retailers and the public. In this instance Federal rather than the separate State regulation of packaging we feel would be more efficient and more practical.

The third point is there are two important differences between the House and Senate bills.

And the fourth point will be pertaining to a clarifying amendment on grade labeling.

As mentioned, we do feel that H.R. 15440 and Senate bill 985 represent a fair, reasonable, and workable consensus. We want to give credit where credit is due to those who helped to transform the Senate packaging bill into something which, for we as general merchandise retailers, appears to be a reasonable and workable bill.

We feel that Chairmen Staggers and Magnuson have done an outstanding job in accommodating operational problems of our business in the pending legislation. And the special efforts of the Department of Commerce, and Mrs. Ester Peterson, and the staffs of both the House and Senate committees are noted with appreciation.

During our testimony before the Senate committee, we expressed concern about the rather imprecise definition of products, other than foods, drugs, and cosmetics, which were intended to be covered by the

bill. The definition of "other consumer products" has not really been changed, but we are rather satisfied at this point that the future regulations will clarify it.

Our major objection during the Senate testimony was that any agency of the Government might restrict our practice of packaging to a price point. We were reluctant to give ground on this point, but a number of changes in the language in the bill seemed to justify acceptance of a compromise position.

The fact that we as distributors would be represented along with producers and consumers on the Commerce Department Product Committee is particularly significant. We feel this will give us a very real contribution toward working toward a practical packaging program that will be acceptable to us as general merchandisers.

Now, on this matter of whether or not we should have the State laws or Federal law, we really feel that in this instance the Federal law will facilitate the smooth flow of merchandise in interstate commerce. It is very obvious that our economy requires a widespread distribution of consumer products. As retailers we must be concerned about anything that would or could impede or slow the movement of goods between the States.

During 1966 when less than half the States met in their regular legislative sessions, six of the States considered packaging legislation. Next year we will have 47 legislatures meet; and if Congress does not act, we would predict that many States will pass packaging laws of some nature in 1967.

Even if the State laws were to be uniform, the discretionary powers that would be granted to the administrators are such that the uniformity, and interpretation, and enforcement we feel would be almost impossible. Congress has already taken action, for example, on the textile fiber products identification, flammable fabrics and hazardous substances, and we believe the same consideration should be given to the packaging bill.

We feel in this instance that Federal standards are needed which supersede incompatible State legislation. The preemption which is in section 12 of the pending bill we feel is essential.

Now, there are two basic differences as we see it between H.R. 15440 and S. 985. From our point of view as retailers of general merchandise, we should note them. One is section 5(c)(5) of the House bill which was dropped by the Senate. The other factor that we consider far more important is the Monroney amendment which was added to section 6(d) by floor action in the Senate.

The Monroney amendment to section 6(d) of the Senate bill 985 is most important to us retailers. It makes clear and certain that packages already in the stream of commerce will be exempt from any and all regulations which may be issued soon after the passage of the bill and in the years to come.

In support of this position it is noted that the Textile Fiber Products Identification Act in section 15 states: "The Commission shall provide for the exception of any textile fiber product acquired prior to the effective date of this Act."

This is the same consideration that we are asking here which the Monroney amendment covers. Now, also this provision in the textile

law made it possible for, and in fact required, the FTC to issue clear, easy-to-follow regulations which exempted from the labeling requirement all stock which was on hand before the effective date of the new law.

On the other hand, the Hazardous Substances Act did not contain a saving clause for the floor stock. And the FDA officials were sympathetic. They promised lenient enforcement but said they lacked the authority to issue a formal regulation permitting the sale of all stock on hand before the new law became effective.

This is the area we are a little fearful we may get into here. This reasonable amendment, in our estimation, we don't feel really weakens or detracts from the stated purposes of the packaging bill. It affords needed protection. It was proposed in the Senate by Senator Monroney. It was endorsed by Mrs. Peterson. It was accepted by Chairman Magnuson and adopted without dissent. We would respectfully urge, Mr. Chairman, that the Monroney amendment to section 6(d) of the Senate bill be added to H.R. 15440.

Also pertaining to the grade labeling, it is our understanding that the proponents of this packaging legislation do not intend that either H.R. 15440 or S. 985 would authorize mandatory grade labeling. But in view of an alarming advocacy of grade labeling which appears in the Food Study Commission report, it is not possible that a few years hence more authority would be read into the statement of policy of the packaging bill than is now really intended?

If or when that day comes that grade labeling is practical and in the public interest, we feel then that Congress should specifically authorize it. In the meantime we do not feel there should be any possible indirect authority to require mandatory grade labeling through packaging legislation and/or its forthcoming regulations.

We have noted that the Senate bill and H.R. 15440 represent a position to which our segment of general merchandise retailing can adjust. We have tried to explain a little bit our preference for the Federal law with preemption rather than separate State packaging laws. We would prefer to have 5(c)(5) dropped from the House bill, but would most urgently request that the Monroney amendment be added to the House bill to protect packages in the stream of commerce.

Finally, we hope that it will be made clear that this packaging legislation is not intended to authorize mandatory grade labeling.

We would like to conclude with the observation that on consumer issues it seems to us that great progress can be made by talking things over and working cooperatively toward solutions before legislation is introduced. It seems likely that the unnecessarily extreme packaging bill as originally introduced caused a freezing of positions for and against which delayed the development of the reasonable consensus position which in our judgment H.R. 15440 and S. 985 represent.

We offer our cooperation in seeking reasonable solutions to consumer issues. We look forward to opportunities to demonstrate this. We appreciate the opportunity that you have given us to present the views of the variety stores association segment of general merchandise retailing on these two bills.

Thank you.

(The full statement follows:)

**STATEMENT OF DARYL D. MILIUS, ON BEHALF OF VARIETY STORES ASSOCIATION**

I am Daryl D. Milius, Senior Vice President and General Merchandise Manager of the J. J. Newberry Company. I am accompanied by Philip W. Schindel, the Executive Director of the Variety Stores Association.

This statement is submitted on behalf of the Variety Stores Association whose 750 member companies operate over 8,500 popular priced, general merchandise stores all over America—in all 50 states, in large cities, suburbs, small towns and in all shopping centers, strip, neighborhood and vast regional.

We appreciate this opportunity to amplify and update the testimony on Packaging legislation which our Association gave at the Senate Committee hearing last year.

By way of introduction, let us explain that we are here because, in our judgment, retailers are affected by and have a great stake in Packaging legislation in spite of the "retail exemption." This is the case because more and more retailers, some quite modest in size, feature private brand merchandise. But an even more important reason is the role and function of retailing in the economy. We are not bland or passive showcases for anything and everything that is produced. We are experienced, skilled purchasing agents with a responsibility to our customers. We must select from world markets for each separate store location the right merchandise, have it at the right time and offer it at the right price. It is our responsibility as retailers to see that our customers get satisfaction and good value.

This responsibility remains whether the merchandise is packaged or not and whether it is a famous national brand or not. The customer deals with her retail store.

We retailers are fortunate that we are close to Mrs. America. We think we know something about her wants and buying preferences. We became convinced that on many items she would prefer packaging and labeling which provided clearer content designation and easier to understand information about the use of merchandise.

As a result our people prepared two check lists—"A Guide to Better Variety Packaging" and a "Guide to Merchandise Information." (Copies of each will be found in the committee files.) These have been distributed through Company buyers in very substantial quantities. Their use has helped and continues to help those suppliers who do not have huge consumer research facilities to upgrade and improve their packaging and labeling.

We cite this as one example of how retail companies and various groups of retailers are trying to better serve their customers and to explain the reason for the interest of retailers in Packaging legislation.

If in its judgment Congress decides that consumers need the assistance of a Packaging law, we can only ask that it be reasonable, practical and workable.

Our statement will cover the following points:

1. H.R. 15440 and the Senate passed bill (S. 985) to us in the general merchandise field represent a fair, reasonable and workable consensus position.
2. The unobstructed movement of merchandise in interstate commerce is essential to retailers and the public. Federal rather than separate State regulation of packaging would be more efficient and more practical.
3. There are two important differences between H.R. 15440 and S. 985.
4. A request for a clarifying amendment on grade labeling.

**1. H.R. 15440 and S. 985 represent a fair, reasonable and workable consensus**

We want to give credit where credit is due to those who helped to transform the Senate Packaging Bill into something which, for general merchandise retailers, appears to be reasonable and workable. Chairmen Staggers and Magnuson have done an outstanding job in accommodating operational problems of our business in the pending legislation. The special efforts of Mrs. Esther Peterson, the President's Special Assistant for Consumer Affairs, the Department of Commerce and the staffs of both House and Senate Committees are noted with appreciation. In our judgment the revised Senate passed bill and the pending House bill demonstrate that "consensus" does indeed have meaning and that it works.

During our testimony before the Senate Commerce Committee we expressed concern about the rather imprecise definition of products, other than food, drugs,

and cosmetics, which were intended to be covered by the bill. Such merchandise, called "other consumer commodities," is defined as "any other article or commodity of any kind or class which is customarily produced or distributed for sale . . . for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household and which usually is consumed or expended in the course of such consumption."

This definition has not been changed, but we are satisfied that future regulations will clarify it. Furthermore, the Monroney Amendment in the Senate passed bill, about which we will have more to say later, protects packages in the stream of commerce from retroactive application of any regulation. This protection certainly seems to apply to any future FTC decision as to what merchandise may be covered.

Our major objection during the Senate testimony was that *any* agency of government might restrict our practice of "packaging to a price point." We Variety retailers evolved from Five and Ten Cent Stores. Having merchandise to sell at the most popular and wanted price lines is a way of life with us. We were reluctant to give ground on this point. But a number of changes in language in H.R. 15440 and S. 985 seem to justify acceptance of a compromise position. The changed wording to which we refer includes: the new Declaration of Policy; the procedures for voluntary product standards under the Department of Commerce; the elimination of Section 5(c)(5) and other relatively minor but cumulatively significant changes in Section 5. The fact that we as distributors would be represented along with producers and consumers on Commerce Department Product Committees is particularly significant. This should permit a very real contribution toward practical packaging.

Please let me emphasize that we are not in the food business. Our evaluation of consequences is confined to the general merchandise lines we sell.

## *2. Federal law would facilitate the smooth flow of merchandise in interstate commerce*

It is obvious that our economy requires the widespread distribution of consumer products. A measure of the great success of that system is the fact that identical products and styles and values are available in small towns and rural areas just as they are in the biggest cities.

As retailers we must be concerned about anything that would or could impede or slow the movement of goods between states.

During 1966, when less than one-half of the states met in regular legislative sessions, six states considered Packaging legislation.

One House of the Wisconsin Legislature passed a "little Hart Bill," but then its Weights and Measures Law was amended to give the administrator authority to prescribe rules for the manner of declaring weights and measures and conspicuously showing the quantity declaration.

In Michigan a "little Hart Bill" was rejected in favor of a workable law patterned after the uniform State Food, Drug and Cosmetic Act.

The New Jersey Legislature appointed a Study Commission to look into packaging and advertising practices and recommend needed corrective legislation.

Rhode Island passed a Packaging Law which gives broad authority to the State Sealer to prescribe the size and placement of markings. This law also specifies that the quantity be stated in terms of the largest unit—a variation from the pending Federal Bills and from some State Weights and Measures Laws. Quantity must be expressed in terms of "consumer usage" whatever that means.

New York and Hawaii considered and rejected little Hart Bills.

Next year 47 State Legislatures will meet. If the Congress does not act, it is predicted that many states will pass Packaging Laws in 1967. Even if state laws were to be uniform, the discretionary powers granted to administrators are such that uniformity of interpretation and enforcement would be almost impossible.

In the field of Packaging, like Textile Fiber Products Identification, Flammable Fabrics and Hazardous Substances, we think that Congress should act. Federal standards are needed which supersede incompatible state legislation. The preemption in Section 12 of the pending bills is essential.

### 3. *Important differences between H.R. 15440 and S. 985*

From our point of view, as retailers of general merchandise, there are two differences between H.R. 15540 and S. 985 which should be noted. One of these is Section 5(c)(5) of the House Bill which was dropped by the Senate. The other, and by far the most important, is the Monroney Amendment which was added to Section 6(d) by floor action in the Senate.

#### 5(c)(5)

It is our judgment that this fifth subsection to 5(c) is not needed to protect consumers, and that it seems to open the door to more problems for business than would be warranted. This, to us, is not a major stumbling block but we prefer the Senate version from which this subsection has been deleted.

#### *The Monroney Amendment*

The Monroney Amendment (to Section 6(d) of S. 985) is most important to us retailers. It makes clear and certain that packages already in the stream of commerce will be exempt from any and all regulations which may be issued soon after passage of the bill and in years to come. This was accomplished by adding these words to Section 6(d). No regulation adopted under this Act shall preclude—" (or) the orderly disposal of packages in inventory or with the trade as of the effective date of the regulation."

In support of this position it is noted that the Textile Fiber Products Identification Act in Sec. 15 states: "The Commission shall provide for the exception of any textile fiber product acquired prior to the effective date of this Act."

This provision in the textile law made it possible for and in fact required FTC to issue a clear, easy-to-follow regulation which exempted from the labeling requirement all stock which was on hand before the effective date of the new law.

On the other hand, the Hazardous Substances Act did not contain a saving clause for floor stock. FDA officials were sympathetic. They promised lenient enforcement but said that they lacked the authority to issue a formal regulation permitting the sale of all stock on hand before the new law became effective.

Consider the magnitude of the problems under the packaging bill:

Many, many millions of dollars worth of merchandise will be affected—many times more than under the Textile Fiber Products Identification Act.

The pending packaging bill has two parts. One is a mandatory section which would apply within six months, the other grants continuing authority to FDA and to FTC to issue special regulations as required in the future.

The explanation of Congressional intent contained in the Committee report or expressed during the floor debate on the bill is *not enough protection*. This is so because of the vast amount of dollars involved and also because that "intent" will be long forgotten five or ten years from now when new "regulations" will continue to be issued.

This reasonable amendment does not weaken or detract from the stated purpose of the Packaging Bill. It affords needed protection. It was proposed in the Senate by Senator Monroney and was endorsed by Mrs. Esther Peterson. It was accepted by Chairman Magnuson and adopted without dissent.

We respectfully urge that the Monroney Amendment to Section 6(d) of S. 985 be added to H.R. 15440.

### 4. *An amendment is proposed to state specifically that this legislation does not authorize mandatory grade labeling*

Considerable concern has been generated by several of the majority views of the National Commission on Food Marketing, as set forth in the report issued on June 30, 1966. A very alarming statement on grade labeling appears on page 109 of that report. It proposes that, "consumer grades should be developed and required to appear on all foods for which such grades are feasible, that are sold in substantial volume to consumers, and that belong to a recognized product category."

It is our understanding that proponents of this Packaging legislation do not intend that either H.R. 15440 or S. 985 would authorize mandatory grade labeling. But in view of the Food Study Commission Report, is it not possible that a few years hence more authority will be read into the Statement of Policy (Section 2 of H.R. 15440 and S. 985) than is now intended?

This section states, "Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable

consumers to obtain accurate information as to the quantity of the contents and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods."

*Agencies and Courts have a way of interpreting such words broadly.*

In view of the fact that Congress specifically rejected mandatory grade labeling as long ago as 1943 and has not seen fit to revert to such concepts, it seems prudent and fair to ask that an amendment be written to the Packaging Bill to make it crystal clear that this legislation does not authorize mandatory grade labeling.

If or when the day comes that grade labeling is practical and in the public interest, Congress should specifically authorize it.

In the meantime there should be no possible indirect authority to require mandatory grade labeling through this Packaging legislation and/or its forthcoming regulations.

#### *Summary*

We have noted and expressed our appreciation for the consensus changes, through new language and deletions, which have transformed H.R. 15440 and S. 985 into a Packaging Bill which will help consumers and with which our segment of general merchandise retailing can live.

We have tried to show that Federal legislation with preemption is preferable to separate State laws in this area involving interstate commerce in thousands and thousands of items of merchandise.

In comparing H.R. 15440 with S. 985 we have expressed preference for the elimination of 5(c)(5) from the House Bill but we have most urgently requested that the non-controversial language of the Monroney Amendment be added to Section 6(d) of the House Bill so that it is clear that packages in the stream of commerce are protected from retroactive application of any regulations which may be issued under the mandatory and later under the discretionary parts of the Bill.

Finally, in view of the specter of mandatory grade labeling which was raised by the majority report of the National Commission on Food Marketing, we urge an amendment which clearly states that this Packaging Bill does not give FDA or FTC authority to require grade labeling.

#### *Conclusion*

I would like to conclude with the observation that on "consumer issues" it seems to us that great progress can be made by talking things over and working cooperatively toward solutions before legislation is introduced. It seems likely that the unnecessarily extreme Packaging Bill, as originally introduced, caused a freezing of positions for and against which delayed the development of the reasonable consensus position which in our judgment H.R. 15440 and S. 985 represent.

We are encouraged that the President's Special Assistant for Consumer Affairs seems to be using and advocating the "let's solve it together" approach. We offer to her and to the Congress our cooperation in seeking reasonable solutions to "consumer issues."

Robert O. Kirkwood, Chairman of the Board of the F. W. Woolworth Company, said to our Association as he retired as Chairman of its Board:

"Consensus is not an idle word. But we cannot be very effective participants in formulating a consensus position if all we say is no, and do nothing."

This we believe. We look forward to opportunities to demonstrate it.

Thank you for giving us an opportunity to present the views of the Variety Stores Association segment of general merchandise retailing on the pending Packaging legislation—H.R. 15440 and S. 985.

The CHAIRMAN. Thank you very kindly. I am sure that we welcome the statement from the retailers.

Do you have a statement, Mr. Schindel?

Mr. SCHINDEL. No; no.

The CHAIRMAN. You are accompanying Mr. Milius?

Mr. SCHINDEL. Just holding his briefcase here.

Mr. MILIUS. These are the gentlemen that have been involved in all the background scenes and discussions.



The CHAIRMAN. We are glad to have both of you with us, and we are certainly glad to have this for the record. I think it is very important.

Mr. Adams?

Mr. ADAMS. I have no questions, Mr. Chairman, but I thought the testimony was excellent and specific to the bill, which we very much appreciate.

Mr. MILIUS. Thank you.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I would be interested in your observation relative to the promotional schemes that are used, for example, cents-off. Do you feel that this should be barred as a merchandising practice? You would certainly know whether it has a promotional effect on a new product. What is your judgment on that?

Mr. MILIUS. Well, in our opinion, and of course in the general merchandise area of the business we represent, basically, in the few instances that we have become involved in, cents-off deals represent a tremendous value to the customer.

Mr. NELSEN. They represent a tremendous value?

Mr. MILIUS. Yes. Generally speaking, it is in relation to the introduction of a new product or a new item.

Mr. NELSEN. Then you feel it does have merit, the cents-off?

Mr. MILIUS. As far as we are concerned with it, and we are not involved with it too much in our business, I don't see anything particularly wrong with it.

Mr. NELSEN. Of course this has been one of the targets of a great portion of the testimony, that the cents-off is very bad and a malpractice or a deception. I am interested in your observation as a retailer.

Now, perhaps you may have a suggestion as to one of my observations, and that is that in many cases some of the deception is in the advertising that is put up by the retailer himself. I have made previous reference to something which occurred in a store where I recently purchased some canned goods. There was a sign "four for 98 cents" and so I bought four cans from this display, only to find that each was priced at 47 cents when I checked out.

I was interested because I felt that this was impossible, but a narrow column of canned goods was marked four for 98 cents, with the fringe areas all marked 47 cents. Now, this was deception, but I might point out that I didn't buy the second time. However, there is some of this that goes on in display and, after all, we are expected to have our eyes open when we buy.

Another question. Are you of the opinion that uniform weights should be in the package or uniform sizes?

Mr. MILIUS. Only to the degree, or not to the degree that there should necessarily be uniformity, but a clear marking.

Mr. NELSEN. Yes. Without question I would agree that there are many items on the shelf that could be uniform, there could be greater uniformity perhaps, but how do you draw the line? That is what bothers me. How do we define a rule or a regulation that is going to be superior to the competitive forces in our free enterprise system?

It seems to me that it is going to be difficult to draw the rules under which we would operate.

Mr. MILIUS. I was particularly interested in one of the comments made earlier on the aspect that potato chips are in so many sizes. We don't happen to sell potato chips, but if we did, I am sure we wouldn't be carrying 50 sizes, and this same thing carries all down the line, to toothpaste and many other commodities. I think here, again, a retailer has the responsibility, as I mentioned earlier in the testimony to provide our customers with what we feel is the best value to the customer and just because we have 47 different sizes of toothpaste we do not carry 47 different sizes of toothpaste, and we haven't the space to carry them, first of all.

There, again, we try to pick what we feel is the best ultimate value.

Mr. NELSEN. Another point that seems to imply deception in testimony is where there are identical packages so far as size is concerned, but different weights in the package. This to me was rather confusing when we first heard this testimony early in the hearings, but then later we find that the package might contain a new product which perhaps has a fluffier content and is more palatable to the consumer. The weight in the package would be less, but the quality of the product at least as far as the consumer is concerned, has been improved. Now is this a fact as far as your observation is concerned?

Mr. MILIUS. I would like to have Mr. Schindel comment on that. I think he has some interesting background.

Mr. SCHINDEL. Well, sir, in the first place we don't admit that there is very much deception in most stores, and we don't admit that there is very much confusion. We think that the American housewife likes to shop, and we are very pleased that she does. We think that because there are differences it makes her shopping experience more pleasant.

Now, sir, when a man comes out with a new product and he changes the size or the weight, the amount of merchandise in a package, usually to see to it that the new product, the new package, will sell at a popular price point, there is nothing in the world deceptive or confusing about that in our judgment.

Mr. NELSEN. I would agree. Is it not also true that a package, we will say at the price of 39 cents, might have an appeal to the consumers and would not at 41 cents and they wouldn't buy it?

Mr. SCHINDEL. Yes, sir.

Mr. MILIUS. Yes, sir.

Mr. NELSEN. Isn't it also true that with a variety of package sizes, the housewife can buy a particular size depending on the number of consumers at home? As I have pointed out in the hearings, I have been batching it, as we say, and so I go to the store and I buy the smallest can of peas that I can get. I know I am paying more than I would be paying if I bought a can of a different size. However, I do not want to have a can of peas in the refrigerator for a whole week, and I presume there should be a variety in package sizes.

Mr. Chairman, I thank the witnesses. They have certainly been very durable and helpful. Thank you.

Mr. MILIUS. Thank you.

The CHAIRMAN. I want to again thank both of you, and I think your testimony has been very helpful.

The committee will have to adjourn now until 2 o'clock this afternoon or as soon thereafter as we can assemble, depending on what is

going on on the floor. We have only two witnesses this afternoon, and we hope that we will get through with them very quickly. If those two are here and wish to put their statements in the record, they may do so.

The committee is adjourned until 2 o'clock.

(Whereupon, at 12:23 p.m., the committee recessed, to reconvene at 2 p.m., the same day.)

#### AFTER RECESS

(The committee reconvened at 2:10 p.m., Hon. Harley O. Staggers (chairman) presiding.)

The CHAIRMAN. The committee will come to order.

Our first witness for this afternoon will be Mr. Frank Mitchell Corso, Esquire. Take the witness chair, please, sir.

Is your statement very long?

Mr. CORSO. No; it is not, Mr. Chairman. I will attempt to be as brief as possible. In fact, I submit the statement, I will just make some rather brief statement.

The CHAIRMAN. All right.

#### STATEMENT OF FRANK MITCHELL CORSO, ESQUIRE, CHAIRMAN, S.A.D. (SHOPPERS AGAINST DECEPTION)

Mr. Corso. I have with me, Mr. Chairman and members of the committee, certain items which I would like to show to the committee which I am sure have been exhibited in the past.

However, as chairman of S.A.D.—S.A.D. is a shoppers group and S.A.D. stands for Shoppers Against Deception.

This is essentially a Long Island group with not a large membership such as Mrs. Newman's group when she spoke this morning, since it originated in Long Island and is presently in the status of establishing chapters in Buffalo and Los Angeles.

We are primarily concerned with the question of the cents-off deals and with the question of establishment of certain guidelines for packaging sizes.

If I may illustrate the points quite briefly to the committee. I have before me, for example, and this is an illustration for the cents-off situation, packages or boxes of Score which is a nationally known hair cream for men. One of the packages is marked 10 cents off, the other is not 10 cents off. These were both taken at the same time, from the same shelf, in the same store.

The 10 cents off marked upon the package says "Save 10 cents. Regular price, 89. You pay only 79 cents."

On the side is marked 69 cents by the store, I believe one of the major national food chains.

Now on the same shelf is a non-cents-off package which is also marked 69 cents which would indicate either one of two things: either that—well, it would indicate to me that there is a white tag on it that the non-cents-off package was marked to compare with the cents off which is 69 cents.

However, if we lift the white label that was placed upon this box we then find that stamped directly on the non-cents-off box it was 63 cents, which was marked up to 69 cents to coincide with a 10-cents-off

deal which indicates the product that was originally 89 cents marked down to 79 cents and the non-cents-off shows that the original price before the cents off was actually 63 cents.

Now if this is confusing to the committee, imagine what it is to the housewife and to myself because these particular items I shopped myself in one of the major food chains. Of course, these cents off refer to that part of the bill as to the relating validity or whether the cents-off deal should be prohibited.

I have another box of Gleem toothpaste, one of which is marked 4 cents off and one of which has no indication of any cents off. Now the 4 cents off has a price of 43 cents. The no cents off has a white label of 47 cents which would seemingly indicate that the 4 cents off was a valid one since 4 from 47 is 43. Of course, the 4 cents off is marked.

However, we then find by lifting the white label on this box of Gleem toothpaste that the price stamped directly on this box was 39 cents so that in reality the 4 cents off is really 4 cents more than what the original price was on the product.

This is another example of the cents-off situations which are actually not true cents off.

Mr. NELSEN. Mr. Chairman, at that point, would the gentleman yield?

Who marked the price on the package that is concealed by the label? The manufacturer?

Mr. CORSO. I could not definitely answer that. It may possibly have been by the retailer. Assuming it was by the retailer, I assume, Mr. Nelsen, what you are referring to is this bill does not apply to retail.

Mr. NELSEN. Right.

Mr. CORSO. Assuming this was done by the retailer since most of the cents-off deals that we have found have left it to the prerogative of the retailer to place whatever price he wants to on the product, this is still an indication that the cents-off situation, regardless of who puts the price on it, is not one which is valid to the public in most cases.

For example, if I may just take an illustration further with Maxwell House coffee. Now these are two jars that were purchased at the same time from the same shelf. One of them is marked 10 cents off, the other has no-cents off. Now the 10 cents off has a price on the top directly on the metal cover of 83 cents. The no-cents off has a white label of 93 cents which would indicate there is a valid 10 cents off, 93 cents to 83 cents.

However, if we again lift the white label the original price stamped stamped on the metal cover is 79 cents which indicates that this 10 cents off is in reality 4 cents more than the regular price.

So obviously, what has happened in many of these cases is that either the retailer or the distributor, as the case may be, or the original packager, the product is marked up the original price and then the cents off is marked so as to indicate a bona fide cents off but in reality in many cases—

Mr. NELSEN. If the gentleman would yield.

You recommend there should be some enforcement language in this bill directed at the retailer who obviously in both cases that you cite has been the individual who has been deceptive because he has tampered with the price on the package.

If the Maxwell House coffee people with the cents off intended that there be a cents off and the retailer did not comply with the promotion scheme, you can't blame the Maxwell House coffee people for it, can you?

Mr. Corso. If what you say is true, you cannot. However, from our checking, I doubt very much if in all cases—in fact, it would seem that in most cases this is, I think, a deliberate attempt on the part of even some packagers to give the retailer a promotional aspect which he knows really is not intended.

For example, if I may, and this is exactly in line, these are two packages of Plus White toothpaste which were purchased in Korvette stores, and I come from Long Island in the Huntington area. Now one of these packages is marked by Hazel Bishop directly on the package "30 cents off. Regularly 89 cents, now 59 cents."

There is another package of Plus White which is not marked cents-off which has a white label of 59 cents attached to it. Now, if we lift this 59-cent label and see what was originally on the package, it was 53 cents on the no-cents off.

Now we confronted at that time the district manager of Korvette stores and we showed him these two items and we asked him if he had any idea when Plus White put out by Hazel Bishop, if it ever sold for 89 cents so that they could refer to it in large, red, bold print that it is 30 cents off the original 89-cent price because all of the indications were that the original package on their shelf was selling for 53 cents.

This would seem to indicate that the Hazel Bishop Co. put 30 cents off on this Plus White toothpaste only as a promotional thing without any actual basis in fact that this was ever, or at least recently, selling for 89 cents with the point being that some of the packagers and manufacturers as part of their promotional thing are in many cases misleading the public.

Now I understand there is some dealing in semantics between the use of the word "confusing" or "deceiving." I think this is only semantics, the prime point being is the public being given a true story as far as the facts?

Now that takes care of the cents-off.

May I just refer to the standards in size. I will just refer to two items. I have here two jars of olives, the same size, same type olive. Now one of these jars is marked 6 ounces and sells for 35 cents which would be a penny short of 6 cents an ounce. The other one, which is larger, is 8 ounces, and sells for 55 cents or almost 7 cents an ounce.

So we have here a situation where the larger jar cost almost 1 cent more per ounce than the smaller jar. This is an example, of course, which would relate to any standardization in size or content.

Let me, in conclusion, just refer to this. This is an example of where standardization helps the housewife establish that she is not getting the proper value for her money because I have here two jars of cherries, one is 8 ounces and one is 16, so one is twice the size of the other, exactly.

The 8-ounce jar is marked 29 cents. The 16 ounce, which is exactly twice the size, was easy to compute for the housewife. The item seemingly should be no more than 58 cents or probably less since it is twice the size in the same container.

However, the 16 ounce is 68 cents. Now taking these two standard items it is very easy for the housewife, assuming that there is this standardization where one is exactly twice the size of the other, to establish that actually it would have been better for her to purchase two of the smaller jars than to purchase one of the larger jars.

This particular point would refer to—in fact, be in favor of some standardization so that the housewife would have some criteria to establish what she is paying for.

The CHAIRMAN. Does that finish your statement?

Mr. CORSO. Yes.

(The full statement follows:)

**STATEMENT OF FRANK M. CORSO, CHAIRMAN OF S.A.D. (SHOPPERS AGAINST DECEPTION)**

Mr. Chairman, and Members of this Dignified Committee of Congress: I appear before you as Chairman of S.A.D. which stands for Shoppers Against Deception.

Our S.A.D. group originated in Long Island. Chapters are being formed in Buffalo and Los Angeles areas.

S.A.D. began when, as a result of my wife falling and breaking her leg I was relegated to the task of doing the family food shopping. As a result of my experiences and discussions with other Shoppers, S.A.D. was formed.

I may add parenthetically that I am also a Congressional Candidate in the Second District of New York.

We have found substantial evidence indicating deceptive pricing practices and actual fraud being practiced upon the buying public in Long Island and undoubtedly across the entire Nation.

I charge that there is evidence that not only is there fraud by some National Food Chains but also by some National Packers and Manufacturers.

Our Shoppers Against Deception has now shopped many of the food chains.

We have had representatives of A & P Food Stores to my office in response to a telegram. We exhibited the articles purchased in ——— store, but did not receive a satisfactory explanation.

I have with me some of the items purchased in various stores in a "Deceptive Pricing Kit" which I will shortly exhibit to the members of this Committee.

We in S.A.D. have also picketed a Hills-Korvette Food Store and distributed circulars at Shopping Centers to encourage the Housewife and Shopper to resist these deceptive pricing practices. A copy of one of our circulars is attached to papers submitted.

Let me illustrate some of the flagrant and deceptive practices perpetrated in some Long Island supermarkets:

1. Gleem toothpaste 3.25 ounces: on the shelf was a box marked 4¢ off, priced at 43¢ and on the same shelf was a regular "no cents off" box of Gleem with a white label affixed marked 47¢ which would indicate that the 4¢ off was bona fide. However, upon looking under the 47¢ label, it was found that stamped directly on the box was a price of 39¢, which indicated that the four cents off was, in actuality a four cents *increase* over the original price.

2. Score Hair Cream 3.0 oz. box: marked "Save 10¢" with a price on the original carton stating regular price 89¢—You pay only 79¢. The retailer then made an additional price change reducing it to 69¢. Which is quite a saving from an 89¢ original price. On the same shelf, at the same time, a regular "non cents off" box had a white label affixed of 69¢, which would seemingly indicate that the regular priced box was priced to coincide with the sale. However, upon lifting the white label it was found that the regular price was 63¢. So that—the supposed saving of 20¢ was in reality a 6¢ increase.

This store practice is only part of the great deception upon the buying public.

Bristol-Myers, the manufacturer, should be asked when their product last sold for the alleged regular price of 89¢. I ask Bristol-Myers, if they be guilty of deception, to cease and desist.

3. Plus White Tooth Paste manufactured by Hazel Bishop was found upon the shelves in a 3.25 oz. carton. One box was marked "regularly 89¢, 80¢ off,

now 59¢." A regularly priced box on the same shelf at the same time had a 59¢ white label thereon. However, upon lifting the white label an original price of 53¢ was found stamped on the box. So that the 30¢ off price of 59¢ was actually 6¢ more than the original regular price.

I believe that Hazel Bishop should step forth and either desist or explain.

There are many other illustrations that I have in my "Deceptive Pricing Kit" of the same nature.

4. Then we get to the deception in packaging and pricing. We in S.A.D. found, for example, a 6 oz. jar of olives at 35¢ which is almost 6¢ per oz. And on the same shelf an 8 oz. jar (which the Shopper would expect to save on) priced at 55¢ or almost 7¢ an oz.

5. Another example was an 8 oz. jar of cherries at 29¢ and the same cherries in a 16 oz. jar at 63¢.

Who is trying to deceive the American Buying Public?

There are other examples I have brought with me to show to you.

S.A.D. resents phony "cents off" deals.

S.A.D. resents having to search for the net contents on packages.

S.A.D. resents confusing references such as "Giant Pint" or "Biggest Quart."

S.A.D. resents net contents in fractions of ounces, or different categories as to impair the ability of consumer to compare.

We believe that the higher cost of living, with food items being the largest contributor to it, is due in large part to those who under the guise of increased costs, etc. deliberately confuse and deceive the buying public.

When an item, through deception and fraud, is increased 5¢ on 50¢, that is a 10% increase in cost to the consumer.

We want an effective bill passed in Congress and ask that HR 1 5440 be passed with teeth in it.

The Consumer, the Buying Public demands and deserves Protection against these evils. The Congress, of which I hope soon to be part, can do no less.

#### SHOPPERS AGAINST DECEPTION

*The High Cost of Living* is affecting us all.

*We Resent* deceptive pricing practices.

*We Resent* items marked "*Cents Off*" that are Not Really cents off.

*We Resent* having to Search for the net contents of a package.

*We Resent* confusing references such as "*Giant Pint*", "*Huge Quart*."

*We Resent* net contents being in impossible fractions of ounces that make it impossible to figure the cost per ounce without a slide rule.

#### TO PROTECT THE SHOPPER

We insist that U.S. Congress pass an effective "Truth in Packaging" Bill.

We insist that retail stores do away with Deceptive Pricing Practices.

#### JOIN S A D (Shoppers Against Deception)

and tell us about deceptive pricing practices you have found. State the store, the date of purchase and item.

#### THE CONSUMER IS THE LEAST ORGANIZED AND THE MOST VICTIMIZED

Help lower the Cost of Living by Advising and joining S A D.

FRANK M. CORSO, *Chairman*,  
SHOPPERS AGAINST DECEPTION.

449 South Oyster Bay Road, Plainview, New York 11803; GE 3-5440.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I am not so sure whether this bill reaches the problem that you are talking about. It seems to me that most of that comes about in the retail store angle, the marking of the prices, and so forth.

Do you think the retail stores ought to be included in this bill?

Mr. CORSO. We certainly have a problem of enforcement. However, if there were some way of doing it, I think it should be done.

However, my reference relates to the coverage of the bill and that is particularly in relation to the question of cents-off as to whether this should be prohibited or some guidelines be used because in most cases the packager or manufacturer does not place upon his package the price.

He may only have 10 cents off regular price and there is no pricing on it so in effect unless something further is done to either prohibit cents-off you are going to still have the consumer in a position where they won't know whether it is a legitimate cents-off or not.

Mr. YOUNGER. Was that label "cents-off" put on by the retailer or was that put on by the packager?

Mr. CORSO. Well, in the case of the Plus White it was put on by the packager. In the case of Gleem toothpaste "4 cents off" was put on by the packager.

In relation to Maxwell House it was put on by the packager, Maxwell House, I assume.

Mr. YOUNGER. Do you consider that is deception?

Mr. CORSO. Well, if there is no question that the original product was selling, for example, for 53 cents, and it is then you get another item which is cents-off and is more than the 53 cents, this is obviously deception.

Mr. YOUNGER. You are not answering the question. Do you consider that deception?

Mr. CORSO. Mr. Younger, as I said before, I understand that semantics has become involved in the hearings as relating to deception. Call it what you will, it is a question of the consumer being disenfranchised and deception, a question of whether existing laws are sufficient to take care of the problem.

I think that, No. 1, everybody realizes there is a problem. Of course, No. 2, then, is that the existing laws obviously have not been sufficient to take care of the problem because of the situation I have just related to you.

Mr. YOUNGER. Has it been because the laws have not been sufficient or that they have not been sufficiently enforced?

Mr. CORSO. Of course, I know there are many people more cognizant of the laws than I am in this regard. It is my understanding that the present regulations as administered by the various Federal agencies require, as far as the practicality of appliance, some complaint to first emanate from the source to reach the particular committee and then the particular agency and then the agency acts.

In this case, if we were to pass into law H.R. 15440 and the related Senate measure, this, then, would give at least a blanket guideline to industry and to provide certain enforcement procedure without the initiative first coming from a complaint to an agency and then the agency acting thereafter.

Mr. YOUNGER. Well, you still don't answer the question.

Do you consider this deception or do you consider it just confusion?

Mr. CORSO. I consider it in some cases to be actual fraud.

Mr. YOUNGER. Well, present law is very clear on that. The Federal Trade Commission or Pure Food, either one of them, on any fraud or any deception can go in under the present law, no question about that.

The only question is to whether they have authority to go in if it was only confusion.



Mr. CORSO. Well, let us say since there seems to be confusion about the confusion, I think it would certainly be appropriate that a bill be passed to clear up any questions that may exist.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I was about to ask a question about the cherries. Are they packaged by the same company, both packages?

Mr. CORSO. Yes. In fact, I purchased these myself. We have gone in with some housewives and done some checking of stores and even some men were more interested in this in some cases than the women. These were both purchased in a Big Apple food market in Long Island and these are packaged under their own name, "Big Apple."

Mr. NELSEN. Now the price on the cover, of course, was put there by the retailer?

Mr. CORSO. That is the same company, the Big Apple, all the way down the line. Their label is on it—Big Apple.

Mr. NELSEN. The same company but if it happens that the large package costs more per unit than the small one, again it is a retailer that stamped that price on and it seems to me that they are their processor and the retailer, also.

Mr. CORSO. Yes. It is a retailer named Big Apple, the label on this is Big Apple.

Mr. NELSEN. Of course, there are a very few in that category.

Are you suggesting that Score and Maxwell House, the processors of the other products are involved in deception?

Are you charging that?

Mr. CORSO. I have no factual knowledge of it. However, a question does certainly exist, particularly in relation to something like, say, Plus White, which has 30 cents off and the district manager, when the reporter was standing there, could not respond if he ever knew that this sold for 89 cents.

Mr. NELSEN. I have no more questions, Mr. Chairman.

The CHAIRMAN. Thank you very kindly for appearing and giving us the benefit of your views and your demonstration. It will be helpful.

Mr. CORSO. Thank you.

The CHAIRMAN. Our next witness is Mr. Clinton R. Miller, assistant to the president of National Health Federation.

Mr. Miller, we are sorry that we have to go into the afternoon on these things but it is just as hard on Congress as it is on you.

We are glad to have you and have the benefit of your views. Do you have a prepared statement with you, Mr. Miller?

Mr. MILLER. Yes, Mr. Chairman, a two-page prepared statement.

The CHAIRMAN. All right.

**STATEMENT OF CLINTON R. MILLER, LEGISLATIVE ADVOCATE,  
NATIONAL HEALTH FEDERATION, WASHINGTON, D.C.**

Mr. MILLER. Mr. Chairman and members of the committee, I am Clinton R. Miller, legislative advocate for the National Health Federation. The NHF is a national organization of consumers who are organized so they may exercise a responsible, informed freedom of choice in matters of health.

We appear before you in support of the truth-in-packaging bill. We endorse the purposes of the bill of requiring truthful and complete labeling.

We appear before this committee to suggest the need for an amendment to this bill to prevent a misuse of the statute and a misunderstanding of congressional intent by the Food and Drug Administration.

The need for an amendment has become apparent at the present time because the Food and Drug Administration has taken another labeling provision previously passed by Congress and is attempting to use it for a purpose other than that which Congress intended.

Section 403(j) of the Food, Drug, and Cosmetic Act provides for and contemplates the giving of information to the consumer of relevant information as to the value of various dietary supplement products.

The statute provides for the agency to issue regulations requiring the furnishing of such relevant information. Pursuant to the statute's direction, regulations have been issued from time to time which require various information to be set forth on the label of the product including such information as to whether a specific ingredient has an established need in nutrition and to expressly state that a particular ingredient does not have an established need in nutrition if such is the fact, and other provisions requiring statements as to whether there is a minimum daily requirement for a particular ingredient and the amount which is furnished.

Such facts about ingredients have changed from time to time as scientific knowledge has advanced. Vitamin E, for example, was for many years required to be labeled as having no need established in human nutrition.

In recent years, this ruling was changed when it was held that a need for vitamin E does exist in human nutrition. It is important to note that the Food and Drug Administration did not ban the sale of vitamin E simply because they had not yet discovered its essentiality in human nutrition. They simply required a statement on the label of vitamin E stating the facts as they developed.

On June 18, 1966, the FDA published in the Federal Register an order which provides—

1. For prohibiting the sale of various nondeleterious dietary supplements and ingredients,
2. That certain nondeleterious food supplements be sold in the least economical sizes,
3. That it is a crime to put on the label a complete and detailed list of the dietary ingredients of a dietary food,
4. And finally it misuses their authority to promulgate standards of identity to absolutely prohibit, per se, the sale of a nondeleterious food or food supplement.

Mr. Chairman, and distinguished committee members, we respectfully urge a clarification on this point to make clear congressional intent in the truth in packaging bill. We urge you to include language in this bill to specifically prohibit the misuse by FDA of labeling authority.

An amendment worded somewhat as follows is suggested to be included at the appropriate place in the bill:

PROPOSED AMENDMENT

No requirement for the furnishing to the consumer of complete and accurate information on food containers or food labels shall be construed in such a way as to prohibit, limit, or restrict the sale and distribution of those foods and dietary supplements not deleterious to health.

To this, there might be added the following:

Nor shall the authority to promulgate standards for any commodity constitute authority to establish a standard which would constitute an absolute prohibition per se against the sale and distribution of any food or dietary supplement.

Mr. Chairman, my statement is brief. We appeared before this committee 4 years ago and made a similar suggestion on the Kefauver-Harris drug bill. At this time, Representative Friedel could see the wisdom of our suggestion and he proposed and added that amendment in the Kefauver-Harris drug bill which provided that a person that was used as a medical guinea pig in an experiment had to be informed that he was so being used.

Now prior to this time there was no provision in the law for such a protection to the consumer and I noticed that Commissioner Goddard has as late as Monday of this week issued a new policy statement for the Food and Drug Administration which implements the intent of this committee which when it passed the amendment 4 years ago established this protection for the first time.

The CHAIRMAN. Does that finish your testimony, sir?

Mr. MILLER. Yes.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Miller, this amendment that you have on the second page of your paper is different from the amendment you gave me the other day.

Mr. MILLER. Yes, sir.

Mr. YOUNGER. Why?

Mr. MILLER. This amendment, it seems to me, has a broader scope than the one we gave you the other day. You will notice that this has the words that it cannot prohibit, limit, or restrict the sale and distribution of those foods and dietary supplements not deleterious to health.

Now I don't have a copy of the rough draft which I prepared for you.

Mr. YOUNGER. It has the effect of prohibiting the sale of any food which in general is recognized as safe, was the expression that you agreed on with the council the other day.

Mr. MILLER. Generally recognized as safe. We are not wedded to any language here, we are just making this as a suggestion. The committee, I am sure, can choose what it likes best. I liked the term "generally recognized as safe" because I felt this indicated there was a broad area of foods which obviously was not intended to be banned from sale at the marketplace.

I discussed this with a Congressman who is very interested in this amendment and he preferred the language as "not deleterious to health." I am sure any language, whichever is more specific in defining the food area.

Mr. YOUNGER. We have to be quite sure that any amendment proposed can get around the point of order about being germane.

Mr. MILLER. The new proposed amendment was handed by the Congressman to the House Parliamentarian and he said that it was germane, there is no question about germaneness.

We cleared this with the House Parliamentarian.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No questions.

The CHAIRMAN. Thank you very kindly. Your statement has been helpful to the Congress and to this committee. There are bills, as you know, before the committee, taking care of the situation so I don't know what will be done without hearings.

It is my thought that the committee will hold hearings but the timing will have to be determined by the committee.

Thank you.

Mr. MILLER. Thank you, Mr. Chairman, very much.

The CHAIRMAN. This concludes the hearing of the public witnesses on this bill. Next week we will take up the Government witnesses.

I certainly want to thank my two colleagues on my left for standing with me.

When we will hold the next hearing will depend on whether we have anything on the floor next Tuesday. If we do, we will continue hearings then; if not, we will continue them Wednesday. Notices will be sent to each office.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Adjourned until further notice.

(Whereupon, at 2:40 p.m., the committee adjourned, subject to call of the Chair.)

## FAIR PACKAGING AND LABELING

WEDNESDAY, SEPTEMBER 7, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Today we continue the consideration of H.R. 15440, the fair packaging and labeling legislation.

The main point we have to consider is is there unfair or deceptive packaging or labeling to worry about and what will these bills do about it?

To be more specific I want to give an illustration that was brought to my attention as of yesterday which was laid on my desk. A person went to the store and bought a 3-pound 1-ounce package of detergent priced at 73 cents but he looked at others and one package had 5 pounds 4 ounces priced at \$1.35, a 16-pound 1-ounce package priced at \$3.77. He went to the manager and asked which was the cheapest per unit of weight and the manager said that the largest was supposed to be the cheapest.

He sat down to figure it out and it was not the largest one at all, it was the second largest, the medium. He asked the manager if he had ever figured it out and he said no, he had not had time to figure it out, he was not going to figure it out. Anyway, it was supposed to be the largest one.

The customer figured it out. He said to determine the price per unit it would be necessary to use a fraction denominator as 151 plus 116. Probably not one customer in a dozen could figure it out if his life depended upon it. He says the schools nowadays refuse to teach such fractions.

Now if we get some evidence as to why packages containing reasonably heavy quantities are sold in such odd numbers of ounces as 5 pounds 4 ounces it would be helpful. I am hoping the witnesses will give us information on this.

Is it intended to confuse or deceive customers or is it designed to vary the number of ounces in a package while the price remains the same?

Now if you want to take the trouble you will find, I think, that the middle size package is the most expensive, the large size package is the cheapest per ounce, though I seriously doubt that the seller intended it that way. The difference can be expressed by the fraction of 21.189 over 151.196 cents per ounce.

Neither do I believe that another merchant, he said, offering a pint of paint at \$1 per pint and the same kind of paint at \$2.50 a quart intended such an absurdity.

This raises the question whether merchants have juggled package sizes and prices so much that they have finally confused themselves as well as their customers and they don't know which is the best price!

In the case of the example that this gentleman gave to me, I think it would be pretty hard for the average person to figure out exactly what would be the best buy. I don't know if it is intended to deceive or confuse. Certainly it looks like they were intending something like it.

Our colleague from California, the Honorable Burt Talcott, has a short statement to present. If you will proceed Mr. Talcott.

**STATEMENT OF HON. BURT L. TALCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

MR. TALCOTT. Mr. Chairman, I am concerned about your bill, H.R. 15440, the fair packaging and labeling act and the effect it could have on my congressional district.

The district I am privileged to represent has sometimes been called the salad bowl of America. Monterey County, alone, produces one-quarter of all the head lettuce raised in the United States. Our fruits and vegetables are unexcelled in their quality.

Many innovations in packaging and shipping have been developed by growers in my area. Every effort is made to assure the expeditious delivery of fruits and vegetables in prime condition.

Nevertheless, there is almost always some natural shrinkage. For example, new potatoes will generally shrink 4 percent between the time of harvest and the time of arrival at the eastern seaboard, while late potatoes will shrink only 2 percent.

Harden Farms, a producer of asparagus, packages its product to be sold at a minimum net weight of  $1\frac{1}{2}$  pounds. The company endeavors to package  $1\frac{3}{4}$  pounds so that the final product will never weigh less than  $1\frac{1}{2}$  pounds. A special package was devised containing a pad upon which the butt end of the asparagus rests. If moistened by merchants, the asparagus is kept fresher and does not lose much weight.

Despite all of these innovations and precautions, it would be next to impossible for this company to guarantee that its package would contain  $1\frac{1}{2}$  pounds of asparagus at the point of retail sale. Consequently, I respectfully request that an exemption be written into any recommendations submitted by your committee to the House of Representatives for fresh fruits and vegetables.

Your cooperation and accommodation in this matter will be greatly appreciated.

THE CHAIRMAN. Thank you for your concise presentation, Mr. Talcott.

MR. TALCOTT. Thank you for the opportunity, Mr. Chairman.

THE CHAIRMAN. Our next witness this morning will be Mr. George Grange, Deputy Administrator, Consumer and Marketing Service of the Department of Agriculture, Washington, D.C.

Mr. Grange, we are very glad to have you with us and we hope you can give us some answers to clarify the situation for us.

**STATEMENT OF GEORGE GRANGE, DEPUTY ADMINISTRATOR, CONSUMER AND MARKETING SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY CHARLES W. BUCY, ASSOCIATE GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE**

Mr. GRANGE. Thank you, Mr. Chairman.

I have with me, Mr. Chairman, Mr. Charles Bucy, Associate General Counsel of the Department of Agriculture. I shall appreciate it if in response to questions Mr. Bucy could help me answer.

We appreciate the opportunity to appear before the committee regarding H.R. 15440. The Department of Agriculture filed its report with the committee on July 25, 1966, favoring the legislation.

I do not have a prepared statement for presentation this morning. I would like to make a few remarks concerning our general views on the subject of fair packaging and labeling and comments concerning our activity under other legislation where we have present responsibility for approval of packaging and labeling and then respond to any questions which you may have.

It was our understanding that your most direct interest with the Department of Agriculture had to do with our administration of the labeling and packaging regulations under the Meat and Poultry Products Inspection Acts for your information and consideration in reviewing the present legislative proposals that you have before the committee.

As I stated earlier, the Department has favored the passage of legislation to prevent the use of unfair or deceptive methods of packaging or labeling of consumer commodities. This is something that we feel very keenly about.

The matter of knowing what is being bought both in terms of the ingredients, particularly in terms of the net content, be it net weight or other appropriate measure of the net content, having it possible that an average consumer will not be deceived or misled by package shape, by vignettes on a package which do not fairly portray the content of the package, all practices of this kind, in our judgment, are those that should not be permitted or tolerated in the present-day merchandising picture.

We do not believe there is a widespread use of these misleading or deceptive practices. Only a relatively small number of them, of course, reflect unfavorably, not only on that product but also on other products with which product is competing.

Now with particular reference to our activity in meat and poultry, Mr. Chairman, meat and poultry products are in a special category by themselves and have been for many years. The Meat Inspection Act was passed in 1906 as an amendment to the department's appropriated bill at the same time as the food and drug legislation and then the existing statute itself was reenacted in 1907.

The Poultry Products Inspection Act, patterned very closely after the Meat Inspection Act, was passed in 1957. Under these two statutes all meat and poultry and products therefrom that move in interstate or foreign commerce are required to be inspected for wholesomeness and cleanliness in the processing plant. No meat or poultry can be shipped in interstate or foreign commerce unless it comes from an

official establishment, and an official establishment is one that is operating under the continuous inspection of a Federal inspector or inspectors to review the product, the ingredient, the processing methods, to examine the animals prior to slaughter to make sure they are healthy, that no diseased animals or birds are being used, and that clean, sanitary practices are being followed in the processing plant.

Now in addition to this and as a very close adjunct to it the matter of truthfulness in packaging and labeling has also been a subject that has been regulated or controlled under these two acts.

You see, there is an official inspection mark on each package or each piece of meat that shows that the product has been inspected and passed by the U.S. Department of Agriculture. This has also connoted, in addition to the cleanliness and the wholesomeness of the product, that it was truthfully labeled; in fact, the acts themselves specifically prohibit any misleading deceptive or false labeling.

So under these two acts all labels must be approved in advance before they can be used on any meat or poultry product.

The labels are reviewed to see that there are five mandatory items on them. These mandatory items are (1) the official inspection mark, (2) the name of the product, (3) a statement of the ingredients and, if it has more than one ingredient in the product, listed in the order of their importance, (4) the net weight or other appropriate statement of the net contents of the package and (5) the name and address of the processor or the distributor.

In addition, any statement on the labels is prohibited which would be false, misleading or deceptive. Although, additional statements may be included, they cannot be included if they would be false, misleading or deceptive.

Last year, for example, we approved about 64,500 labels prior to use. We rejected 5,200 labels, most of which were later corrected and are included in the first figure that I cited.

We have on file currently approximately 290,000 approved labels for meat and poultry products.

Just as an example of what is done in examining labels for truthfulness of labeling, and I am emphasizing this aspect of our work because I know that aspect is the one that is germane to the subject before this committee, it is common practice to use a picture or a vignette on a label showing the product inside the package.

Chicken pie, for example, will show a piece of chicken and some potatoes and peas and so forth on the vignette. We examine the product and compare it with this vignette to determine whether or not the vignette does honestly and truthfully portray the contents that are in the package.

If it is apparent that the picture is overstating the content of meat, for example, in relation to the other ingredients, we would reject this label as being deceptive or misleading and require a correction.

I am citing specific examples of actions that we have taken.

As for the lettering, the act says it shall be distinctly legible so we examine the contrast of the lettering with the background, the placement of the lettering on the principal display panel as well as the size of the lettering.



As far as we know, the matter of packaging and labeling in the meat and poultry products has worked quite satisfactorily from the point of view of the consumer, the distributor, processor and the Government agency involved.

We are not aware of any serious complaints from any of these sources on this subject. We are aware that there are certain provisions in H.R. 15440 that are not specifically included in the Meat or Poultry Inspection Acts.

We would suggest that if it were decided at some future date that some of these additional requirements might be desirable that it would be preferable to amend the Meat and Poultry Inspection Acts to include these provisions rather than including it as part of the present legislation.

I am just bringing this up as a future reference because as I said, we believe that the present acts and administration and regulations have been satisfactory and are doing an adequate job presently with regard not only to the wholesomeness and cleanliness and freedom from adulteration of the products but also the packages and the labels that are being approved and are being used.

That, Mr. Chairman, concludes the observation that I wanted to make concerning this subject. Mr. Bucy and I shall be glad to respond to any questions you may ask.

The CHAIRMAN. Mr. Grange, I understand you to say that the Meat and Poultry Inspection Acts go way beyond the provisions that are in our bill. Would my understanding be right or wrong?

Mr. GRANGE. They are different kinds of legislation, Mr. Chairman. I don't think I used the expression "go way beyond."

The CHAIRMAN. No, I know you did not, but I just said that it is my understanding from your presentation that they do go beyond.

Mr. GRANGE. For example, the basic purpose of the Meat and Poultry Inspection Acts, is to assure clean, wholesome, safe meat and poultry products, for the American consumer.

Now, as an adjunct to it, you have the question of the labeling and the packaging. Of course, in this case we have the matter of in-plant inspection, during the time of preparation and processing of these products involved which in this regard, of course, goes beyond the packaging and labeling bill that you have under consideration and also, of course, the provision concerning approval before use of the labeling which is part of the Meat and Poultry Inspection Acts and regulations.

The CHAIRMAN. Let us make a comparison of the two acts with the bills here on our desk. I just wondered if you could point out to this committee the differences.

Mr. GRANGE. I would be glad to, Mr. Chairman.

The CHAIRMAN. All right.

Mr. GRANGE. The comparisons that we made, one comparison has to do with the Poultry Products Inspection Act and the other comparison has to do with the Meat Inspection Act.

There are slight differences between these two statutes so we made two comparisons. Let me use the Poultry Products Inspection Act as the basis of giving you the comparisons.

I don't think there is enough difference between that act and the regulations under the Meat Inspection Act to warrant going through both of them separately unless you desire to do so.

The requirement that the correct identification of the commodity and the name and place of the manufacturer, packer, or distributor which would be included in H.R. 15440 is also required for meat and poultry products.

The requirement that the meat quantity be stated on the principal display panel is also the same.

The requirement that the net quantity be stated on the principal display panel is also the same. Now in this case in our approval before use of the labels, in order to make sure that they are not deceptive or misleading, we have made it a requirement that the net content of weight be placed on the principal display panel.

Many of these things are part of our regulations going to this broader language in the statute prohibiting deception rather than a specific requirement as such, which is part of H.R. 15440.

On the matter of the way the net quantity would be stated, we have followed a different practice than the one proposed in the bill before this committee.

We have followed the practice of requiring that something for example, that was 18 ounces in weight be marked 1 pound 2 ounces. If it were 20 ounces in weight, it would be marked 1 pound 4 ounces.

We have been consistent in this regard. Insofar as persons being able to determine the cost per unit, this is a question that I don't have any personal observation on except to say that we have followed this other practice insofar as the statement of weight is concerned.

Mr. NELSEN. Mr. Chairman, may I ask a question at this point?

The CHAIRMAN. I still have two or three more. I think you better wait until I finish.

Mr. GRANGE. I will move along just as quickly as I can, sir.

The quantity statement must be in contrast with the background or it must be distinctly legible so it is identical with the provisions of the bill you are considering.

The statement must be in type size proportional to the display panel. Again, we have handled this under the distinctly legible requirement. We have certain rules or regulations. For certain size package, it has to be at least a quarter-inch lettering, other sizes have to be half-inch letterings and so forth. We have spelled out what they shall be in the regulations.

The statements must be parallel to the base on which the package rests when displayed. This is the general requirement which we also have followed.

The prohibition of qualifying words in connection with the net quantity statement such as giant quart, yes, we have prohibited the use of qualifying adjectives in conjunction with the net quality statement.

The only one that we have used, I might add, is in the case of some products that are subject to shrinkage and loss of weight during shipment. We have on some products permitted the use of the words "Minimum weight" which is a different type of qualifying, I believe, than you had in mind here.

To establish standards for size characterization such as large, medium, and small we do not have that authority under the Meat and Poultry Inspection Acts. By the same token, we do not have the authority to define serving.

I would point out, though, that we have checked servings and if the statement "will serve four people" in our judgment is false, misleading or deceptive, then we would not approve such a label. But we would not have the authority to define "serving" as such as part of our activity.

The question with regard to cents off has been handled under the Meat and Poultry Inspection Acts by requiring that the base price also be shown on the package, 65 cents, 10 cents off, 55 cents.

All this information would be shown on the package and also we require evidence from the packer that there has been no change in quality or composition of the product involved.

Thirdly, we have issued such approvals on a temporary basis usually limited to 6 months, figuring that you don't go on indefinitely with a cents-off type of sale.

The matter of requiring the percentages of ingredients be shown, we do not have this authority. We would have to show that it was deceptive or misleading not to show the percentages of ingredients. We require ingredients to be shown just like under the Food, Drug, and Cosmetic Act in order of their importance but we do not have the requirement that the percentage of each ingredient be shown.

To prevent the distribution of commodities in packages of sizes, shapes, or proportions which are likely to deceive, our only authority under our acts would again go to the general prohibition against misleading or deceptive devices.

We have disapproved certain shapes of packages and we have disapproved more particularly certain packages that were too big for the contents that were in the package on the grounds that they were deceptive, where the net fill was less than a person would obviously expect.

The matter of standardizing packages, the last one that is on this list, the matter of standardizing packages does not come within the scope of the Meat and Poultry Inspection Acts. As long as they are not deceptive, as long as they were properly labeled, as long as the net weights were properly shown, the question of being able to prohibit a certain package because it was nonstandard would not be included in the present acts.

So if I might sum it up, Mr. Chairman, the meat and poultry inspection operations compare very closely with what is being considered under this bill with two or three exceptions. One would be the matter of the standardization of packages, the percentage of ingredients and the sizes or shapes of packages. With this exception, the other requirements under H.R. 15440 are practically the same as the way we are operating under the Meat and Poultry Inspection Acts.

That, I believe, Mr. Chairman, is a résumé of what is included in the comparison which we submitted giving our comments on specific provisions of H.R. 15440 as compared with the provisions of the Meat and Poultry Products Inspection Act.

The CHAIRMAN. Thank you, Mr. Grange.

I notice at the end of the comparison, the very last sentence, you say "Under approval-before-use procedure, however, variances from customary retail weights which might have such result, are required to be stated on the label in large print so as to alert the customer."

Would you comment on that?

Mr. GRANGE. Yes, sir.

For example, Mr. Chairman, it is customary to pack bacon in half-pound, pound, or 2-pound packages. We have had considered in the past 14-ounce or 15-ounce packages of bacon. We have said in order for us to approve this package you will have to put 15 ounces in letters that are as large as the word "bacon" itself so that, in our judgment, with people being so accustomed to buying 1 pound of bacon that we want something that would really attract their attention so that there would be not much chance of anybody being misled or deceived and thinking that they were getting a 16-ounce package of bacon.

The CHAIRMAN. Well, now evidently the poultry and meat packers have lived with your laws for many, many years. Can you see any reason why the rest of the industry should not be able to live with a similar code of regulations which will preclude deception?

Mr. GRANGE. No, I see no reason, Mr. Chairman, why a reasonable code insofar as packaging and labeling were concerned should cause any hardship to the industry.

The CHAIRMAN. Well, it seems to me that is the sole purpose of this bill and I just want to get your opinion on it.

Mr. Jarman?

Mr. JARMAN. I join in welcoming Mr. Grange to the committee and thank him for the contribution to our record.

I have no questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Grange, generally speaking, there is a lot of difference between the way you handle poultry products and the way they would be handled under this bill?

Did you hear me?

Mr. GRANGE. No, I didn't understand you.

Mr. SPRINGER. I will repeat the question.

In general, in comparing the present law with respect to poultry products, is there any great difference between what you do here under your present law and what is done under 15440?

Mr. GRANGE. I think that the final outcome would be quite similar. The method of operation, of course, is somewhat different. Approval before use of labels, of course, is a different matter, so is continuous inspection. As far as the final outcome on labeling and packaging, there should not be a significant difference.

Mr. SPRINGER. That is the way you analyze this, what you are doing and what this bill is?

Mr. GRANGE. Yes, sir.

Mr. SPRINGER. Thank you very much.

The CHAIRMAN. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

I am very much aware of what the Department of Agriculture does in meat and poultry. I come from an area where they have an awful lot of poultry. I do see a very sharp distinction between meat and poultry products and the rest of the products that you find in the average supermarket.

Don't you think there is a considerable distinction between the nature of these products? I mean they don't even package meat and

poultry in the sense that everything else in the store is packaged, isn't that true?

Mr. GRANGE. Well, there are many processed meat and poultry products, of course, in addition to the unprocessed meat and poultry. We have the canned and frozen products.

Mr. MACKAY. I think maybe this is the point. Do you find confusion in the packaging of canned meat products? Do you feel that the consumer is up against a real problem in judging value of, say, canned beef?

Mr. GRANGE. We have not, as I stated earlier, had any number of serious complaints concerning the labeling and packaging of meat and poultry products. Now we think that the existence of the Meat Inspection Act and our approval of labels for the last 50-odd years has probably contributed materially to having as good packaging and labeling practices as we have in this country.

Mr. MACKAY. For instance, on weight, if you required standardization of canned meats?

Mr. GRANGE. No.

Mr. MACKAY. Fish or poultry?

Mr. GRANGE. Well, fish is not covered.

Mr. MACKAY. Poultry. Have you had any problem with the shapes or sizes of these cans?

Mr. GRANGE. Of course, dependent upon whether you are talking about a ham spread or a whole ham or deviled ham, there has been a practice in the industry of adopting some pretty well standardized types of cans. Of course, a canned whole ham is considerably different than a meat spread. The quantity statements are clearly and legibly displayed and, in cases of highly standardized packages such as the example I just gave on bacon, there are special marking requirements.

As we stated in our report to the committee, we have not had a difficult problem arise, in our judgment, insofar as the standardization of packages is concerned.

Mr. MACKAY. This gets down to the heart of the matter. We have been trying to find out from the witnesses where the problem is to pinpoint the confusion. It seems to me your testimony is that insofar as meat and poultry products, canned and packaged meat and poultry products, that you have not encountered confusion.

Mr. GRANGE. That is right, sir, and my remarks are confined only to the meat and poultry products. I am not trying to draw generalizations concerning other products.

Mr. MACKAY. I have no further questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Did I understand you to say that last year you approved 64,000 labels?

Mr. GRANGE. Yes, sir.

Mr. YOUNGER. You mean that is just the labels approved in 1 year, different labels? How many labels are there all together? You must have several million.

Mr. GRANGE. No, sir; we have about 290,000 approved labels on file.

Mr. YOUNGER. And 64,000 of them were approved in 1 year?

Mr. GRANGE. Yes, sir. I can explain that if you would like. Every time there is a reprint of a label, a change of any kind, the require-

ment is that the label be submitted to us prior to its being used. These labels are being changed in a minor manner constantly so that there is quite a bit of turnover in the commercial labels that are used in this country; they get a little better ink, they get a little better, sharper way of presenting a picture, something of this sort results in a change of labels.

Mr. YOUNGER. Under packaging, I am not sure I understand you. One goes to the supermarket and looks in the packaging there and you can see wrapped up in cellophane chicken legs and thighs, breasts, and so forth. I don't remember any labels or anything on them.

Mr. GRANGE. If they have been shipped in interstate commerce the Federal inspection mark will be on packaged chicken or other meat or poultry products.

Mr. YOUNGER. Just the inspection mark?

Mr. GRANGE. Well, along with it then we would have approval of that label.

Mr. YOUNGER. Well, I don't remember any labels on them. You go to the store and you buy your chicken in a little cellophane wrapped container. You see the chicken, the thighs and the legs and the breasts there, you can order what you want to, but I don't remember any labels on them.

Mr. GRANGE. You may be referring to those that are cut up and packaged right in the store itself.

Mr. YOUNGER. That is right.

Mr. GRANGE. In that case, no, this does not come under the poultry inspection program. There is a specific exemption for retailers in this regard and this packaging would be outside the scope of the Poultry Inspection Act.

Mr. YOUNGER. Your limitation, is that the inspection of the poultry at the place where it is butchered?

Mr. GRANGE. And the labeling and any cutting-up operation.

Mr. YOUNGER. Well, there is no labeling on those packages. I am talking about the packaging and you say that they are not labeled. That is, the retailer cuts it and packages it himself, there is no label or anything on it, but when he gets the whole chicken from the processor, wherever the chicken comes from and butchered, your stamp is there so far as your inspection.

Mr. GRANGE. That is right.

Mr. YOUNGER. It is not reinspected at the retail level?

Mr. GRANGE. Cutting-up operations that are done, let's say, by a large chainstore that has to have its own central cutting-up establishment, this is defined as being an official processing establishment under the Inspection Act and they are required to have inspection to see that cleanliness and sanitation is maintained. Therefore, the labeling automatically follows and the package would be approved by the Department of Agriculture and would bear the inspection mark.

Thirty-pound boxes of ice-packed chicken that move directly into a retail store where the retail store takes it in the backroom and cuts up the chicken and packages it as cut-up chicken or packages the legs separately from the breasts, this would be outside the scope of the Federal Poultry Inspection Act. It does come under some of the State and municipal requirements but as far as the Federal law is

concerned, it would be beyond the scope of the statute that we administer.

Mr. YOUNGER. In the processing, canning of meats and poultry, you have inspectors in the plants?

Mr. GRANGE. Yes, sir.

Mr. YOUNGER. And most of your labels, I suppose, are on the canned meats and canned poultry and products of that type?

Mr. GRANGE. Yes.

Mr. YOUNGER. Where you have a combination, as chicken and spaghetti, that comes under your supervision, also?

Mr. GRANGE. Yes, sir.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

I have just one question. I didn't hear all the testimony for which I apologize. I noticed that in comparing the bill that I was looking at and the Meat Inspection Act, in section 5(c)(3) which goes to cents-off for economy size you point out that there is no specific restriction with respect to cents-off for economy size representation in the present regulations, but then you say in this regard, "However, the Department under the approval-before-use procedure requires that there be no change in the product and until labeled. The label shows the base price to which the cents-off applies."

Unless I misunderstand it or in any event which would clear it up, isn't it the retailer who sets the price of the meat?

Mr. GRANGE. Of course, we are speaking here of the labels which we approve, and the labels which we approve would be those used by a processor, manufacturer, or distributor who is required under the law to receive inspection and, therefore, approval of his labels.

Mr. MACHAY. Do you approve price the same time you approve the labels?

Mr. GRANGE. We approve the label for the truthfulness of the label and there is a prohibition against any misleading, false, or deceptive labels. We have taken the position and have for years that a cents-off label on a can of spaghetti and meatballs without showing what the base price was from which the cents-off is going to be deducted could be deceptive.

If they cut down on the number of meatballs in the spaghetti at the same time they used the identical label and just showed cents-off, we have taken the position that would be false, deceptive, or misleading and, therefore, have required that these two requirements be met before we would approve a cents-off label.

Mr. MACDONALD. In other words, your approval would have to say, "Regular price 35 cents, 3 cents off, 32 cents"?

Mr. GRANGE. Yes, sir.

Mr. MACDONALD. And that is the only way you would do that?

Mr. GRANGE. Yes, sir.

Mr. MACDONALD. Thank you.

Mr. GRANGE. We have not had very many of these, I might add, Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

ment is that the label be submitted to us prior to its being used. These labels are being changed in a minor manner constantly so that there is quite a bit of turnover in the commercial labels that are used in this country; they get a little better ink, they get a little better, sharper way of presenting a picture, something of this sort results in a change of labels.

Mr. YOUNGER. Under packaging, I am not sure I understand you. One goes to the supermarket and looks in the packaging there and you can see wrapped up in cellophane chicken legs and thighs, breasts, and so forth. I don't remember any labels or anything on them.

Mr. GRANGE. If they have been shipped in interstate commerce the Federal inspection mark will be on packaged chicken or other meat or poultry products.

Mr. YOUNGER. Just the inspection mark?

Mr. GRANGE. Well, along with it then we would have approval of that label.

Mr. YOUNGER. Well, I don't remember any labels on them. You go to the store and you buy your chicken in a little cellophane wrapped container. You see the chicken, the thighs and the legs and the breasts there, you can order what you want to, but I don't remember any labels on them.

Mr. GRANGE. You may be referring to those that are cut up and packaged right in the store itself.

Mr. YOUNGER. That is right.

Mr. GRANGE. In that case, no, this does not come under the poultry inspection program. There is a specific exemption for retailers in this regard and this packaging would be outside the scope of the Poultry Inspection Act.

Mr. YOUNGER. Your limitation, is that the inspection of the poultry at the place where it is butchered?

Mr. GRANGE. And the labeling and any cutting-up operation.

Mr. YOUNGER. Well, there is no labeling on those packages. I am talking about the packaging and you say that they are not labeled. That is, the retailer cuts it and packages it himself, there is no label or anything on it, but when he gets the whole chicken from the processor, wherever the chicken comes from and butchered, your stamp is there so far as your inspection.

Mr. GRANGE. That is right.

Mr. YOUNGER. It is not reinspected at the retail level?

Mr. GRANGE. Cutting-up operations that are done, let's say, by a large chainstore that has to have its own central cutting-up establishment, this is defined as being an official processing establishment under the Inspection Act and they are required to have inspection to see that cleanliness and sanitation is maintained. Therefore, the labeling automatically follows and the package would be approved by the Department of Agriculture and would bear the inspection mark.

Thirty-pound boxes of ice-packed chicken that move directly into a retail store where the retail store takes it in the backroom and cuts up the chicken and packages it as cut-up chicken or packages the legs separately from the breasts, this would be outside the scope of the Federal Poultry Inspection Act. It does come under some of the State and municipal requirements but as far as the Federal law is



concerned, it would be beyond the scope of the statute that we administer.

Mr. YOUNGER. In the processing, canning of meats and poultry, you have inspectors in the plants?

Mr. GRANGE. Yes, sir.

Mr. YOUNGER. And most of your labels, I suppose, are on the canned meats and canned poultry and products of that type?

Mr. GRANGE. Yes.

Mr. YOUNGER. Where you have a combination, as chicken and spaghetti, that comes under your supervision, also?

Mr. GRANGE. Yes, sir.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

I have just one question. I didn't hear all the testimony for which I apologize. I noticed that in comparing the bill that I was looking at and the Meat Inspection Act, in section 5(c)(3) which goes to cents-off for economy size you point out that there is no specific restriction with respect to cents-off for economy size representation in the present regulations, but then you say in this regard, "However, the Department under the approval-before-use procedure requires that there be no change in the product and until labeled. The label shows the base price to which the cents-off applies."

Unless I misunderstand it or in any event which would clear it up, isn't it the retailer who sets the price of the meat?

Mr. GRANGE. Of course, we are speaking here of the labels which we approve, and the labels which we approve would be those used by a processor, manufacturer, or distributor who is required under the law to receive inspection and, therefore, approval of his labels.

Mr. MACKAY. Do you approve price the same time you approve the labels?

Mr. GRANGE. We approve the label for the truthfulness of the label and there is a prohibition against any misleading, false, or deceptive labels. We have taken the position and have for years that a cents-off label on a can of spaghetti and meatballs without showing what the base price was from which the cents-off is going to be deducted could be deceptive.

If they cut down on the number of meatballs in the spaghetti at the same time they used the identical label and just showed cents-off, we have taken the position that would be false, deceptive, or misleading and, therefore, have required that these two requirements be met before we would approve a cents-off label.

Mr. MACDONALD. In other words, your approval would have to say, "Regular price 35 cents, 3 cents off, 32 cents"?

Mr. GRANGE. Yes, sir.

Mr. MACDONALD. And that is the only way you would do that?

Mr. GRANGE. Yes, sir.

Mr. MACDONALD. Thank you.

Mr. GRANGE. We have not had very many of these, I might add, Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

On page 3, you made reference to the fact that under the authority of the Food, Drug, and Cosmetic Act, you have established certain rules as to labeling. Did you not state that?

I made a note here on section 5(c)(4), page 3. You stated that under the Food, Drug, and Cosmetic Act, you have set up some regulations relative to the statement of ingredients.

Am I to understand that some of your authority you take from the Food, Drug, and Cosmetic Act? You made reference to the Food, Drug, and Cosmetic Act at that point.

Mr. BUCY. You mean at 5(c) on page 3 of this comparison?

Mr. NELSEN. Yes.

Mr. BUCY. No. The reference to the Food and Drug Act is in the column that sets forth what the bill that you have under consideration authorizes.

Mr. NELSEN. Thank you.

Mr. BUCY. That does not have reference to the Department's program.

Mr. NELSEN. I see.

Now you stated that under the broad language of the law under which you operate you have set up these standards. Now, as to net quantity and principal display panel, have you any knowledge as to the authority granted under the Food and Drug Act or the Federal Trade Commission authority? Would they not have the same right to set up regulations similar to yours if they wished to do so?

Mr. GRANGE. I don't believe I could answer that question, sir.

Mr. NELSEN. Now, another point that has been brought up so many times has been the fact that the print on a label was so small that you could not read it.

Now you have regulations that require adequate size of print so the customer may identify the product without putting on his bifocals.

Mr. GRANGE. Yes.

Mr. NELSEN. Now statements have been made that under the present law that there is not adequate authority granted to the Food and Drug Administration as to the size of print.

Now I have a letter that has been sent in to a member of the committee by the label manufacturers under "Misbranded Foods," section 403, under regulation No. 6.

Smallness or style of type in which such words, statement or information appears, insufficient background contrast, obscuring design or vignettes, or crowding with other written, printed or graphic matter.

This is considered to be mislabeled. The point that I wish to make, Mr. Chairman, and I am not interrogating the witness on this because this is not in his department, but this language certainly makes it crystal clear that in the labeling there is sufficient authority presently in the law.

It seems to me as this hearing goes on it would appear to me that the existing law has not been able to limit it and if there is anybody guilty as far as permitting confusion as to labels it certainly is the fault of enforcing authorities that now have authority of enforcement.

Mr. Chairman, I have no further questions but I do wish to state to the witnesses here that I think we all appreciate the fine job that has been done in the Department that they represent and that you have our highest compliment for a very fine job that has been done.

Mr. GRANGE. Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

What is your penalty if someone violates a provision of your law?

Mr. BUCY. Here you have preuse approval, Mr. Rogers, and you have inspectors in the plant. Any product that goes out has to have the inspection stamp legend on it and they will not approve the use of the inspection stamp legend unless the label on that product going out meets the requirements.

Mr. ROGERS of Florida. Suppose it is in a deceptive box with your approved label on that box?

Mr. BUCY. I think Mr. Grange referred to the fact that this comes into the question of whether the labeling along with the container does constitute a deceptive device. In other words, if you got a box that should properly hold 2 pounds and you have 1 pound of product in it, why, then, I think Mr. Grange pointed out that on preapproval they would not approve the labeling for use in that manner.

Mr. GRANGE. We simply would not approve a deceptive box, Mr. Rogers.

Mr. ROGERS of Florida. Do you approve all the boxes? Is that what you are talking about?

Mr. GRANGE. Yes.

Mr. ROGERS of Florida. Do you check all the boxes that the goods are packaged in?

Mr. GRANGE. Unless the label itself makes it plain what kind of a container it is.

Mr. ROGERS of Florida. I am not saying "unless," I am asking you do you approve all the boxes?

Mr. GRANGE. No.

Mr. ROGERS of Florida. Of course not. Absurd. Your main thrust is to the labeling, isn't it?

Mr. GRANGE. Yes.

Mr. ROGERS of Florida. How do you get to a situation, say, where someone does put it in a box after you have approved the label that could be included as deceptive? Do you have to refer that to Federal Trade or do you have the jurisdiction?

Mr. GRANGE. No, we would withdraw our approval of such a label.

Mr. ROGERS of Florida. What is your penalty?

Mr. GRANGE. It is a criminal penalty if they ship without having our inspection mark.

Mr. ROGERS of Florida. Suppose you approve the label but they put it in a box and now you are telling them that is deceptive. Do you have any penalty for that or what action can you take?

Mr. GRANGE. We would withdraw our approval of that label, Mr. Rogers.

Mr. ROGERS of Florida. But that does not affect what they have already done?

Mr. GRANGE. No, that would not affect what they have already done but it would provide for penalties if they continued to do it. Most of our operations under the Meat and Poultry Inspection Act are in the nature of preventive type of operation rather than taking sanctions after they have violated some provision of the law.

Mr. ROGERS of Florida. As I understand it, you don't make a package in panels or in certain ounces, is that right? In other words, you only care if they put the net weight?

Mr. GRANGE. We require a different method than the one proposed in the present bill. We require that the largest common denominator be used.

Mr. ROGERS of Florida. Well, suppose when they package a piece of meat it is a little over a pound, what happens?

Mr. GRANGE. Well, as I testified earlier, I used the example 18 ounces, I believe, we require that that be marked 1 pound, 2 ounces.

Mr. ROGERS of Florida. Suppose it is 18½ ounces?

Mr. GRANGE. That would be 1 pound, 2½ ounces.

Mr. ROGERS of Florida. So you can do it in the half ounces, too?

Mr. GRANGE. Yes.

Mr. ROGERS of Florida. You see no problem there as long as it is stated specifically?

Mr. GRANGE. It is not common to deal in fractions of ounces as far as any prepackaged commodity is concerned.

Mr. ROGERS of Florida. I know they prefer not to but sometimes there are products that have to be marketed that way. I am asking you your feeling, the Department's feeling, that as long as they make it clear on their labeling exactly what the net weight is, you have no objection?

Mr. GRANGE. We have no objection as far as meat and poultry products are concerned, Mr. Rogers.

Mr. ROGERS of Florida. You feel you have sufficient authority under law to make sure that the public is properly informed as to the products that are under your control, meat and poultry products, even though they could put half ounces or whatever it may be?

Mr. GRANGE. At the present time and under present marketing practices, the answer to that is "Yes."

Mr. ROGERS of Florida. Well, you are not asking for any change in your law, as I understand from your testimony?

Mr. GRANGE. That is right.

Mr. ROGERS of Florida. You are asking to be excluded from it.

Let's see. What about servings? Do you define servings?

Mr. GRANGE. No.

Mr. ROGERS of Florida. Do you think that is necessary for you to do so?

Mr. GRANGE. Mr. Rogers, in connection with some of our prepackaged products that have listed the number of servings, we have home economists, we have testing kitchens, we have checked to see whether in our judgment the statement of servings is accurate and if it is, then we approve it.

If it is not accurate, we disapprove the label and require either that the quantity be changed or that the number of servings be changed.

Mr. ROGERS of Florida. Do you have a standard that you could publicize? Do you publicize so that the manufacturers know, so that the housewife could know that when you say so many servings this means so many cups or so many pieces of bacon or whatever it may be?

Mr. GRANGE. No; we have not done that.

Mr. ROGERS of Florida. Is this possible to do?

Mr. GRANGE. Well, we could—

Mr. ROGERS of Florida. How do they know? I don't understand unless you have some standard that is set how you can tell whether a serving is proper or not.

Mr. GRANGE. It is a matter of expert judgment and decision on the part of home economists.

Mr. ROGERS of Florida. Your home economists might change.

Mr. GRANGE. This would be true whether it were published or not published.

Mr. ROGERS of Florida. So you can go through some proceeding to change it, it is not the opinion of one person.

I won't pursue this. I am not criticizing, I think you are doing a pretty good job myself.

Mr. BROYHILL. Mr. Chairman, I yield my time to the gentleman from Florida.

Mr. ROGERS of Florida. I thank the gentleman.

Let me say this: One other point I wanted to go into was on the grading of meat. Do you supervise the grading of meat?

Mr. GRANGE. Yes.

Mr. ROGERS of Florida. Is all meat graded by the Department of Agriculture?

Mr. GRANGE. No. The grading of meat is on a voluntary basis and only where it is requested do we provide grading and charge a fee to cover the cost of grading it. The same is true of poultry, Mr. Rogers.

Mr. ROGERS of Florida. Yes. Now, what about a chain store? Suppose it decides to make its own grading? They may do that?

Mr. GRANGE. As long as they do not apply an official grade mark they may do their own grading; yes, sir.

Mr. ROGERS of Florida. And then they advertise prime meat, Safeway prime meat. Well, I have seen it. Maybe they don't but you say this is not possible?

Mr. GRANGE. They would not use the word "prime," Mr. Rogers.

Mr. ROGERS of Florida. Choice.

Mr. GRANGE. Or "choice." They could call it Safeway premium meat, if you want to use that adjective.

Mr. ROGERS of Florida. But they can't use "Safeway choice meat"?

Mr. GRANGE. You see, one of the official grades of the Department is the "U.S. Choice."

Mr. ROGERS of Florida. Yes.

Mr. GRANGE. We have held under our statutes and others, and Food and Drug for years has held that the use of this word "choice" connoted the official grade and that it would have to in fact meet the official grade standard if they were to use the word "choice."

Mr. ROGERS of Florida. Suppose it does? Suppose they maintain it does? Can they use it?

Mr. GRANGE. Then you would have only the question of whether or not it was represented that it had in fact been officially graded.

Mr. BUOY. The law prohibits anyone from representing that any product has been officially graded when in fact it has not.

Mr. ROGERS of Florida. Then, as I understand it, you are saying that a grocery store chain could not use the words "Safeway Prime," "Safeway Choice," or "Safeway Good," in the classification of their meats?

Mr. GRANGE. We don't think they could, and they have not done it. Mr. ROGERS. Public Law 272 of the 65th Congress is what Mr. Frey is referring to which amended the Agricultural Marketing Act of 1946 making it a crime to claim that a product has been officially graded when in fact it has not been so graded.

Now the words that we use, "Prime," "Choice," "Good," and other Federal grade terms used on fruits and vegetables or on poultry and so forth, it has been our view that these words have been built into the system to such an extent that the use of such words, without very clear qualification would actually connote that it had been officially graded.

Mr. ROGERS of Florida. Has this been tested in the courts?

Mr. GRANGE. This has not been tested in court, Mr. ROGERS.

Mr. ROGERS of Florida. This is a Bureau opinion but it has not yet been tested?

Mr. GRANGE. Yes.

Mr. ROGERS of Florida. Well, I have seen advertised, I don't know what chain it was because I thought about it at the time of these hearings, when they say prime and choice but now they don't say "USDA Prime" or "USDA Choice" and it may be that it was and it may be that it was not.

Mr. GRANGE. And it may have been officially graded, Mr. ROGERS.

Mr. ROGERS of Florida. It may have.

Mr. GRANGE. There are many of them that have all of their beef officially graded.

Mr. ROGERS of Florida. But would it not be an advantage, I think, to say "USDA prime," "USDA choice"? I would think it would.

But, anyhow, this has not been tested in the court.

Well, then as I understand it, there is no actual requirement of packages being checked by you, no set standard for servings other than your home economists who would check it out that way, that they may package in different weights, even portions of ounces as long as the net weight is stated clearly on the label.

Mr. GRANGE. Yes.

Mr. ROGERS of Florida. But you feel that you need no additional authority and should be excluded from the provisions of this bill?

Mr. GRANGE. Yes, sir.

Mr. ROGERS of Florida. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Dr. Carter.

Mr. CARTER. Along that line, your meat is usually sold by pounds and fractions thereof instead of by servings, isn't that true?

Mr. GRANGE. There are some meat and poultry products where servings are given but I agree with you most of the products that we are talking about here are sold by net weight rather than listing the number of servings.

Mr. CARTER. I have noticed that in the meat markets in some of our stores that the labels—I suppose that meat has actually been graded by the Department of Agriculture Prime and Choice in the markets.

Another rather interesting thing, I don't notice some packages of meat labeled ounces. I see it is an unusual thing, pounds and decimal fractions there instead of ounces. I have been observing the meat markets, particularly since this hearing and we have been checking on

truth in packaging. Most packages of meats on labels have pounds and decimal fractions thereof which I think is very good, I like that much better than ounces.

Well, about standardization of packages, as long as the package is not deceptive you don't have any quarrel with the size or shape of that package, is that true?

Mr. GRANGE. Under the present statutes, this is correct.

Mr. CARTER. Yes, sir.

The percentage content, I notice you don't follow that. You have the content in order of the importance of each item, is that true?

Mr. GRANGE. Yes, sir.

Mr. CARTER. Why don't you have the percentage?

Mr. GRANGE. Well, the act provides that the ingredients shall be listed, and if more than one ingredient, shall be listed in order of their importance. This is part of the statute that we are administering. This is the reason we don't have percentages. Under the present statute you would have to have the finding that not to have percentages was false, deceptive, or misleading.

This, perhaps, would be rather difficult to do, in most cases, anyway.

Mr. CARTER. Would you want percentages labeled? Would you want that power to label each can of chile, percentage of pepper and meat, beans and so on, in that can, or would you like to have that power?

Mr. GRANGE. We usually don't like to have additional authority unless we have a very good reason for having it. With one or two exceptions, I am not aware of any particular difficulty or contentious problems arising because of the percentage statements not being included on the label.

Let me just say this now: We are talking about meat and poultry and, if I might offer an observation, we should not be trying to draw too many extensive generalizations from meat and poultry.

For example, with regard to percentage of ingredient, the most important ingredient is the meat or poultry, it is the most expensive one, usually, and it is the most important one.

On most of these important multipurpose foods we have standards of composition that define the minimum meat or poultry content. A chicken pie has to have 14 percent chicken in it, chile con carne has to have 40 percent beef in it. The standards of composition have set up these minimums, you see. So this has to be taken into account in considering the need and contribution of a requirement that would show the percentage of ingredients on a package.

Mr. CARTER. If you have that authority, if you did list the percentages, you could give away trade secrets of manufacturers, though, could you not? That would be done if you listed the percentages of the content?

Mr. GRANGE. Yes, sir. We know the formulas, of course, in our approval of labels and part of the statute makes it a crime if we divulged any trade secret. Of course, in conjunction with approval of the labels and knowing that the ingredients are listed in the proper order, we have to know what the formula is.

Mr. CARTER. I do not think it would be good to list the exact percentages because you would give away trade secrets of manufacturers.

Thank you.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you very much, Mr. Chairman.

I want to commend you gentlemen and the Department for the position that you have taken and especially for the way that you have administered the laws which are presently at your disposal.

I understood a moment ago you said that so far as has been brought to your attention, you have not had any complaints from the consuming public regarding any failure on your part to give them adequate protection against fraudulent, deceptive, or misleading advertising or labeling; is that not correct?

Mr. GRANGE. That is correct; yes.

Mr. WATSON. And if I understood you further, you said that presently you do not have the authority over standardization of packages as contemplated in this legislation. Did you make that statement?

Mr. GRANGE. That is correct.

Mr. WATSON. I see. And further, since you had not asked for any such authority we can reasonably assume that you would conclude that there is no necessity for that in order to protect the consuming public against deception in packaging?

Mr. GRANGE. We see no present need for such authority with respect to meat and poultry products.

Mr. WATSON. And since you used that term, you do not have the authority over standardization of packaging as contemplated in this legislation, then it is your considered judgment that this legislation does contemplate standardization of packaging?

Now you made the statement. I am not trying to corner you and I thought it was a very wise and well thought-out statement.

Mr. GRANGE. Well, we are aware of the fact that there is provision in this bill that would permit standardization of packages.

Mr. WATSON. Which would permit standardization.

Mr. GRANGE. I didn't intend to make a statement that we necessarily thought the standardization of packaging would automatically flow from the passage of the bill. We have no opinion on that.

Mr. WATSON. Of course, I am sure in the conduct of the affairs of your Department you would not ask for any authority if you did not contemplate the use of that authority?

Mr. GRANGE. Yes.

Mr. WATSON. Since there is such a provision in this legislation, then we can only conclude that everybody would anticipate action upon that particular authority.

Is that not correct? Whether it is used or not, they would have the authority to reach that objective; would they not, sir?

Mr. GRANGE. Well, you use two different approaches here, sir. We would not ask for authority in the Department unless we contemplated using it.

Mr. WATSON. And the assumption is that no other department would ask for it unless they contemplated the usage of it?

Mr. GRANGE. If that same assumption is applied to other departments, then, you would logically assume there would be a certain amount of use made of any authority that was included in the bill.



Mr. WATSON. Thank you. Again, I want to commend you for the position that you have taken and especially so, since I have had a little relation with your Department down our way. Certainly, you have been eminently fair and you have been diligent in the protection of the public against any failure on the part of meats or poultry products to measure up to standards.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. WATSON. I believe I heard him first and then I will yield to you.

Mr. CARTER. I want to compliment the gentlemen for a wonderful presentation. I think the Department of Agriculture does a wonderful job in the supervision of labeling and grading.

Mr. WATSON. Now, if you have a kind word to say about the Department, I will yield to you.

I will yield to you.

Mr. ROGERS of Florida. Could you tell me if in the study the Department made, whether the meat products were probably the most expensive proportion of the housewife's food budget?

Mr. GRANGE. I didn't understand, Mr. Rogers.

Mr. ROGERS of Florida. Would the housewife spend more on meat and meat products, poultry and poultry products, probably than other food products? Would this normally be the most expensive item, say, in the weekly, monthly food bill of the housewife?

Mr. GRANGE. I presume there are people here who could give you the answer, Mr. Rogers. I won't try to give you a percentage because I am afraid I might miss but I think that it is the largest single element. It is less than 50 percent but the largest single element of the average food budget.

Mr. ROGERS of Florida. Thank you, very much.

The CHAIRMAN. Any further questions?

Mr. MACDONALD. I just have one.

I gave up, Mr. Grange, before, when I was asking you about that cents-off thing.

I return to it because it has been kicked around a good deal with other witnesses and you seem to have a very easy formula for taking care of it.

After I asked you the questions and you said that they had to put what the cents-off was off, it then sort of troubled me whether or not you would run afoul, not to use a pun, but that you would be in trouble with some other agency if you permitted the wholesaler, whose labels I guess you OK—

Mr. GRANGE. Yes, sir.

Mr. MACDONALD (continuing). To tell the retailer how much he can sell something for. Would that not be treading on the antitrust laws?

Mr. GRANGE. The criticism of cents-off labeling that we have heard has had to do with preprinted labels, part of a regular commercial label where in advance they determine that it is going to be 5 cents off and, of course, it is only this kind of label that we in the Department are involved with in connection with meat and poultry.

For a retailer on his own to mark something down by a certain number of cents, I, personally, had not heard too much criticism of this particular practice. We are not certain, Mr. Macdonald, that

we have the right formula for handling cents-off, I should add. I told you what we had done. We have not had too many instances. We have said that if some changes are made with regard to all other foods insofar as what is permitted in terms of cents-off labeling, we would want to consider it in connection with our label approval.

If some general practice were to develop on the other foods, it is our belief that we probably would want to follow this same general practice insofar as meat and poultry products are concerned.

Mr. MACDONALD. My point is that I am sure you have discussed this with the Department attorneys. Did they ever feel that perhaps you were going to run afoul of the antitrust laws by telling the wholesaler that he can dictate to the retailer what they are going to sell the product at, what price?

Mr. YOUNGER. Will the gentleman yield?

Mr. MACDONALD. As soon as he answers that.

Mr. GRANGE. Mr. Bucy is our Associate General Counsel in the Department.

Mr. BUCY. This may be why there are so few applications for the use of it, it depends how it is used. The retailer can sell at any price he wants to but if the wholesaler uses cents-off and you have nothing to measure it against, the housewife does not know what the cents are off from. All this does is say that this is the recommended price that it has been at and it lets the housewife know that the wholesaler is giving them 6 cents off on what the retailer is paying.

Mr. MACDONALD. Well, don't you have to use the dodge about the suggested price?

Mr. BUCY. Well, this is what it has to come down to, because retailers can sell at any other price.

Mr. MACDONALD. Is that the suggested price?

Mr. BUCY. As I understand, it is. I am not familiar with the ordinary operations of such practice.

Mr. MACDONALD. Actually, that goes to a large segment of this bill and that is why I am so curious, it would be a way out. If you are thinking about that way out, you also have to think of other laws. You people have taken the way out and I assumed that as Mr. Watson really asked, that you were doing this legally.....

Mr. BUCY. We assume we are.

Mr. MACDONALD. Following a process that was illegal. I yield to Mr. Younger.

Mr. GRANGE. I just would like to say we discussed this with the Federal Trade Commission before we did this, this goes back several years now, and it did not object to our approval of such labels or our setting up these requirements prior to approving the labels.

Mr. YOUNGER. My question was if a retailer puts a stamp on the can or container that would be part of the labeling.

Mr. BUCY. We only regulate interstate commerce, we cannot regulate the retailer, what he does at the retail level. If he wants to put up a sign on the display——

Mr. YOUNGER. But you control the label.

Mr. BUCY. It may affect the label but we regulate the man who moves the commodity in interstate commerce and packages it. If

the retailer wants to put up a sign over a lot of meat products that indicates something contrary, why, this is a matter for the local authorities to move in on their Fair Trade Practice ordinances.

Mr. YOUNGER. Do you mean to infer that a retailer can relabel any package that he wants to of meat and poultry? If he gets a can of spaghetti and meatballs—

Mr. BUCY. When he received it in interstate commerce they cut it up into breasts and legs, and so forth.

Mr. YOUNGER. No, I am talking about a can of spaghetti and meatballs and it has your label on it. Now, do you mean to infer, because that is the inference which you made, that the retailer—

Mr. BUCY. I think the problem is under either local or State laws but we do not have any authority to move in on him if he operates at the local level.

Mr. MACDONALD. Could I finish, Mr. Younger?

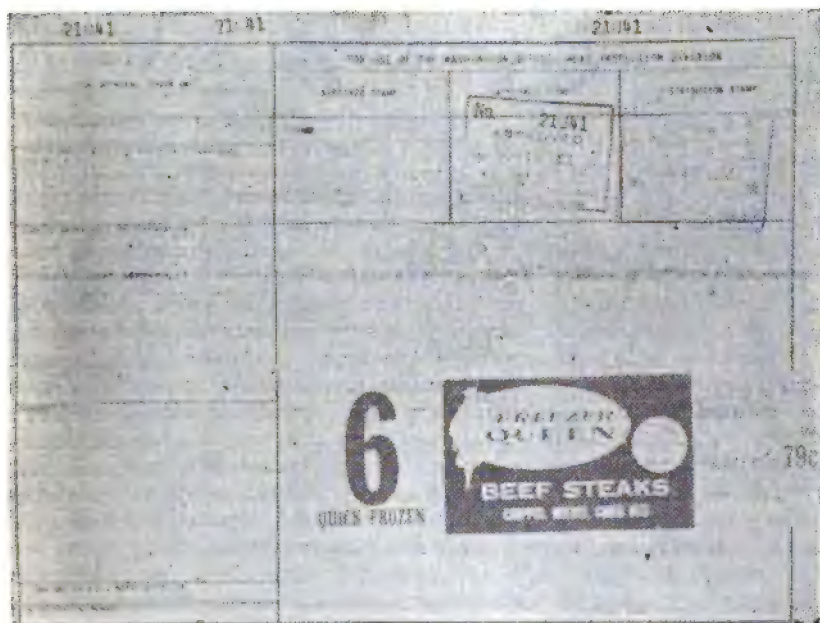
Mr. YOUNGER. You can finish.

Mr. MACDONALD. Just to help a void in the record here, could you give some illustrations of cases in which you permitted the manufacturer to label his product and then gave a base of what the cents off was on?

If you don't have it with you, it would be very helpful to me as a member of the committee, and I would think the rest of the committee—

Mr. GRANGE. We would be glad to submit it for the record, Mr. Chairman, if that meets with your approval.

(The material requested follows:)



RECEIVED		APPROVED	
NO. 0011562		NO. 0011562	
DATE		DATE	
SIGNATURE		SIGNATURE	
<p><b>12</b> <b>QUICK FROZEN</b></p> <p><b>DEER STEAKS</b></p> <p><b>2 lbs. 4 oz. Net Wt.</b></p> <p><b>YOU PAY ONLY \$4.95</b></p>			

RECEIVED		APPROVED	
NO. 0011562		NO. 0011562	
DATE		DATE	
SIGNATURE		SIGNATURE	
<p><b>DEER STEAKS</b></p> <p><b>2 lbs. 4 oz. Net Wt.</b></p> <p><b>YOU PAY ONLY \$4.95</b></p>			



Mr. MACDONALD. Thank you very much.

The CHAIRMAN. Any further questions?

Mr. Moss?

Mr. Moss. Mr. Chairman, I have not had an opportunity to review the comparison here of existing authority with the proposals of 15440 but to the extent I have, do you have authority for prescribing the type of package for meat products? Just give one example, bacon.

Mr. GRANGE. Our authority concerning type of package, Mr. Moss, is limited to a question of determining whether or not it is false, deceptive, or misleading. We have had some packages where the fill of container or something in our judgment was misleading and therefore we did not approve it.

Mr. Moss. False, deceptive, or misleading, you have authority. Is a package of bacon with a small plastic front showing neatly matched edges of lean and leading you to the conclusion that that is a good, lean package of bacon false and misleading where upon opening it you discover that you have gotten a pretty fat slab of bacon from which that slicing was done?

Mr. GRANGE. Of course this is the way it comes out of the slicing machine, Mr. Moss, it has not been deliberately arranged that way.

Mr. Moss. That machine had to be very carefully designed to match those edges with the precision. This did not occur by accident.

Mr. GRANGE. We require, I believe, Mr. Moss, that the viewing surface on something such as bacon, that at least 50 percent of the package must be of transparent nature so that the commodity can be viewed.

The question of the slices of bacon as to whether it is or is not misleading is one that has been discussed, as I know you are acquainted

with. It is a fact that that is the natural arrangement of the viewing surface of the bacon.

Mr. MOSS. I reflect that this is where you are making a statement that I just cannot accept as being a true statement of the facts.

If you have authority to prevent deception in the packaging of meats, if you require 50 percent to be visible, I don't think you would have to go very far from this building to find deceptive packaging. I find that it is extremely difficult on that one commodity to determine whether it is fat, lean, or a mixture.

I think if 50 percent of it is to show that means that either all of the bacon or all of the front of that package should be open or at least have a wrapping which you could see through, and I defy you to find such a package under any standard brand available in this area.

Mr. GRANGE. Mr. Moss, I think I know what you are talking about and I am trying to tell you what I believe are the truthful facts. If I am saying anything that is erroneous here, it is not by intention.

The package of bacon with the cardboard placard on the underneath side in order to have the stiffness that is required to handle it properly means that the viewing surface is limited to the top, and even with being able to see enough of the top to see the strips of lean you still cannot tell too well what the proportion of the lean versus proportion of fat is for that particular package.

Mr. MOSS. I disagree with you again, because I can open that package and pull that hard slab of cardboard out and as soon as I see the entire pack there I can tell whether it is fat or lean.

Mr. GRANGE. This is what I am trying to say, too, sir.

Mr. MOSS. Without removing it from that cardboard that gives the stiffness to the package. If the entire front of the package was visible, I would have no problem in determining whether the bacon was fat or lean.

If your requirement is that 50 percent of the area be visible, then I would say that the stiff cardboard on the back takes care of 50 percent of the package and it would be the front that is transparent.

I say that unless you go in and you want to take the trouble to look for a market that still handles old-fashioned slab bacon and to have them slice it for you that you are playing the game of poker when you buy bacon, you don't know whether it is fat or lean and that is true of some of the other packs of meat.

Increasingly, prepackaging is what faces you at the market. I think that your responsibility, if you have one, should be more diligently pursued than it evidently has been by the package so readily viewable to any person who wants to take time to stop by a meat counter in any shop, in any part of the State.

Mr. GRANGE. We believe we have the responsibility under the statute to prevent deceptive packaging of meat and poultry products. We have not had any great amount of criticism concerning the packaging of bacon or the other products. We have had criticism specifically on bacon concerning the amount of fat that is contrasted with lean in the bacon but we have not had any great amount of criticism that there was deceptive packaging involved which is the point that you are making.

Mr. MOSS. It is inherently deceptive. All you can see are the edges.

You don't see enough of it to see one full slice. I don't see how you can characterize it as anything but deceptive; inherently deceptive, if not intentionally. I think it is an interesting combination of both.

That is all I have, Mr. Chairman.

The CHAIRMAN. I want to thank you, Mr. Grange, and Mr. Bucy, for coming up and being with us to give us the benefit of your knowledge.

Mr. GRANGE. Thank you, Mr. Chairman. We appreciate very much the opportunity to appear before the committee.

The CHAIRMAN. It will help us in our consideration of the bill.

Our next witness will be Mr. Harold E. Crowther, Deputy Director, Bureau of Commercial Fisheries, Department of the Interior.

We welcome you to the committee, Mr. Crowther.

Mr. CROWTHER. Mr. Chairman, I have with me Mr. Robert C. Bruce of the Office of Legislation and Mr. James Brooker of the Bureau of Commercial Fisheries.

The CHAIRMAN. All right. You may proceed.

**STATEMENT OF HAROLD E. CROWTHER, DEPUTY DIRECTOR, BUREAU OF COMMERCIAL FISHERIES, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY ROBERT C. BRUCE, ATTORNEY-ADVISER, OFFICE OF LEGISLATION, AND JAMES BROOKER, CHIEF OF INSPECTION AND CERTIFICATION SERVICE, BUREAU OF COMMERCIAL FISHERIES.**

Mr. CROWTHER. Mr. Chairman, with your permission, I would like to read a statement that I prepared.

The CHAIRMAN. How many pages in your statement?

Mr. CROWTHER. About six and a half pages.

Mr. ROGERS of Florida. Are there any copies, Mr. Chairman?

Mr. CROWTHER. Copies have been submitted.

The CHAIRMAN. Proceed.

Mr. CROWTHER. Mr. Chairman and members of the committee, in a letter to the Department dated August 1, 1966, the chairman requested that we advise the committee concerning the present statutory authority of the Department to establish grades and to inspect fishery products. It is my purpose here today to describe the program of the Bureau of Commercial Fisheries in this area.

The Agricultural Marketing Act of 1946, among other things, authorized the Secretary of Agriculture to develop standards of quality, condition, quantity, grade, and packaging of agricultural products and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.

The act also authorized the Secretary of Agriculture to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce.

By definition in the act "agricultural products" included fish and shellfish, and any products thereof.

The program of developing standards and inspecting agricultural products under authority of the Agricultural Marketing Act by the Department of Agriculture was restricted to traditional agricultural

products. No standards were developed for fishery products during the period 1946 to 1954.

Following enactment of the Saltonstall-Kennedy Act in 1954, funds were made available to the Department of the Interior from duties collected under the customs laws on fishery products and other products thereof.

These funds were designated to be used by the Secretary of the Interior, among other things, to promote the free flow of domestically produced fishery products by conducting fishery technological research. Using these funds, scientists began to develop specific quality standards for fishery products.

During the period 1954-58, quality standards for three fishery products were developed by the Department of the Interior and were promulgated by the Department of Agriculture.

The first standard for fried fish sticks became effective in August 1956 and the other two standards became effective in March and April 1958.

In the Fish and Wildlife Act of 1956, Congress directed that there would be transferred to the Secretary of the Interior from the Secretary of Agriculture, and others, as determined by the Director of the Bureau of the Budget, all activities which relate primarily to the development, advancement, management, conservation, and protection of commercial fisheries.

Subsequently, the Director of the Bureau of the Budget determined that activities pertaining to fisheries carried on in Agriculture under the terms of the Agricultural Marketing Act of 1946 would be transferred to Interior.

The transfer of functions, March 22, 1958, gave the Secretary of the Interior authority to develop quality standards for fishery products and to operate a voluntary fishery inspection service.

Following promulgation of quality standards for fish sticks in 1956, several processors of fishery products applied for voluntary inspection service of the Department of Agriculture as provided under the 1946 act.

When the transfer of functions to the Interior Department was consummated July 1, 1958, the inspection service that was being provided to seven fish stick processing firms became the responsibility of the Interior Department and was administered by the Bureau of Commercial Fisheries.

An area of mutual interest to the Food and Drug Administration; Department of Health, Education, and Welfare; and the Bureau of Commercial Fisheries was recognized at about the time the Bureau's fishery inspection program was scheduled for implementation.

This area of mutual interest was the development of mandatory standards and voluntary standards for fishery products by Food and Drug Administration, and the Bureau.

To facilitate the program operations of both agencies, a memorandum of understanding between the Departments of the Interior and Health, Education, and Welfare was established. This coordinating device gave recognition to the responsibilities charged to the two agencies and provided for cooperation to effect the maximum use of the skills and knowledge of the two agencies.



Under this agreement, the Bureau of Commercial Fisheries submits a copy of all draft voluntary standards to the Food and Drug Administration for review and comment to assure that there is no conflict with the provisions of the Food, Drug, and Cosmetic Act.

In the development of mandatory standards of minimum quality, identity, and fill of container administered by Food and Drug Administration, the Bureau provides services to Food and Drug Administration in an advisory and guidance capacity from first consideration through all stages in the development of the standards.

Currently there are mandatory standards for four fishery products—canned oysters, canned shrimp, canned tuna, and frozen raw breaded shrimp.

In 1960, a second informal agreement was established at the program level between Food and Drug Administration and Bureau of Commercial Fisheries concerning inspection activities related to fishery products.

In the conduct of its program, the Bureau of Commercial Fisheries approves labels, prior to use, which will bear its official inspection marks.

One of the major provisions of this informal agreement provides for Food and Drug Administration to review at Bureau of Commercial Fisheries' request, labels, legends, and stamps from the standpoint of possible conflict with the misbranding provisions of the Food and Drug Administration Act.

Under the authority of the Agricultural Marketing Act of 1946, the Bureau of Commercial Fisheries conducts a program in cooperation with the industry of developing voluntary standards for grades of fishery products.

Voluntary standards of grades are designed to (1) represent the differences in market values; (2) achieve a uniform quality description of the product to aid trading, and (3) aid processors in establishing quality control programs.

Since 1956, voluntary standards have been developed for 15 different products. The standards are composed of two or more levels of product quality designated by grades, and are also composed of other related factors—such as class, style, condition—that may affect the economical use and desirability of the product.

Additionally, two important aspects are also considered: (a) the packaged product with regard to size, volume, net weight, amount delivered, or the number of units per measure; and (b) the amount of fish or shellfish ingredients contained in certain fabricated or processed products.

In the conduct of a voluntary inspection program by the Bureau of Commercial Fisheries, essentially, there are two services, carried out simultaneously by our inspectors in the routine performance of their duties at processing plants operating under USDI continuous inspection: (1) To apply the appropriate standard or specification, and (2) to assure the sanitation of the products.

The first of these two services is to apply the appropriate product standard or specification. This duty is carried out by examining the product during each stage of its production as well as in its final packaged form to determine that all of the specific requirements of the U.S. grade standard or specifications have been met.

The second of the two services carried out by our inspectors is to assure that products are prepared and packaged under the best possible sanitary conditions.

The voluntary program of fishery products inspection administered by the Bureau of Commercial Fisheries has two broad objectives: (a) To assist the fishing industry in the production and orderly marketing of wholesome, high-quality products and (b) to identify to the consumer the quality level of these products through the use of an official inspection mark on the labels of the packages.

This program has experienced a substantial increase in the number of plants and the volume of fishery products inspected between its beginning 1958 and 1966.

The program has grown from providing services to 7 plants in 1958 to 40 plants in 1966. The amount of products inspected has increased gradually from 97 million pounds at the end of the first year of operation to 230 million pounds in 1966.

There is no direct authorization in existing law for the Bureau of Commercial Fisheries to regulate packaging and labeling of fishery products marketed in the United States.

There are, however, certain requirements established by the Food, Drug, and Cosmetic Act which are applied indirectly by the Bureau. The Bureau, in its regulations governing voluntary inspection of fishery products wherein an official seal of inspection is authorized, does not permit the use of its seal on the label of products which may be in violation of the labeling requirements of the Food, Drug, and Cosmetic Act.

The Department of the Interior is in favor of fair packaging and labeling legislation. Section 5(b) of both the Senate and House bills permits administrative exemption in appropriate cases.

Inasmuch as many State and Federal laws exempt certain fishery products from declaration of net weight at point of processing, it is our intention to recommend to the administering agency, if this legislation is passed, that certain fishery products be exempted from its provisions under section 5(b).

For example, individually wrapped fresh fillets are customarily packed in bulk containers of 10 and 20 pounds capacity. The individual cello-wrapped fillets bear on the wrapper "To be weighed at the point of sale." This practice is widespread and has been accepted by State and Federal food officials as being a practical system.

We will be pleased to answer any questions, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Crowther.

Mr. Macdonald?

Mr. MACDONALD. Thank you, Mr. Chairman.

I take it that your testimony went merely to the packaged fish; it did not go to fresh fish, did it?

Mr. CROWTHER. That is correct, sir; it did not.

Mr. MACDONALD. But you do have jurisdiction over labeling in the area of fish and shellfish, don't you?

Mr. CROWTHER. We have it only as far as we have a voluntary inspection service. Those who apply for the service and pay for it are then under this service, but we have no authority beyond the voluntary system.

Mr. MACDONALD. Who, then, decides for purposes of advertising, and so forth, which can, in my own knowledge, be false and misleading, what is a lobster and what is not a lobster?

The reason I am very delighted to see you here today is because I have had the question in my mind for a long time, long before this bill came up. All over New York and various parts of the country you can purchase something which is called a rock lobster and you and I know very well that it is not a lobster at all; it is a crayfish.

Mr. CROWTHER. That is right.

Mr. MACDONALD. Mostly coming in from South Africa and some other parts of the Pacific. Why does your Department permit that to be called a lobster instead of a crayfish?

Mr. CROWTHER. We have no authority to enforce this regulation; this would be the Food and Drug Administration, if there is a law to prevent it, Mr. Macdonald.

Mr. MACDONALD. It goes to Food and Drug.

Mr. CROWTHER. Food and Drug would have the responsibility if there is a law to prevent it.

Mr. MACDONALD. Then I am talking to the wrong person again if I am talking about fishmeal, whether fishmeal should be sold through interstate commerce?

Mr. CROWTHER. As far as the technical part of it you are talking to the right person, sir. The enforcement of interstate commerce shipments of fishmeal is not within the Department of Interior.

Mr. MACDONALD. What has happened to hold up the acceptance of fishmeal as just what it is, fishmeal? Not fish but fishmeal.

Mr. CROWTHER. Yes, sir; I can answer that. You are referring to a product that we call fish protein concentrate which is for human consumption.

Mr. MACDONALD. Right.

Mr. CROWTHER. We have petitioned the Food and Drug Administration to permit the manufacturer of the fish protein concentrate product. They have accepted the petition and the only holdup now is on the fluoride content of the fish protein concentrate.

The Food and Drug Administration claims that the content of fluoride if the product is used constantly in the diets of children from 3 to 12 may cause mottling of the teeth.

Mr. MACDONALD. Cause what?

Mr. CROWTHER. Discoloration of the teeth. This does not affect the teeth—in fact, the fluoride, up to a point, makes the teeth harder, but if used constantly in a diet at a certain level for a long period of time, it can cause discoloration.

Of course, in certain areas where we are particularly interested in marketing the product in the foreign developing countries, this would be a real asset because in those areas, in many of them, there would be a lack of fluorides. So once we have the feeding tests completed which are now underway, and if these feeding tests, results of them, are satisfactory to the Food and Drug Administration, we would hope that there would be a fairly rapid approval of our petition.

Mr. MACDONALD. In conclusion, so I won't take the time of the committee, I would like to say there are many people in New England who are very anxious to have you forge ahead with this, because it is a very

good thing for the economy of our country and also will help other countries.

Mr. BRUCE. If I may comment, you, as a Member, will have the opportunity in the next few weeks to vote on a fish concentrate that is now in the Merchant Marine and Fisheries Committee, and we hope to have it on the floor soon.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

In your statement on page 6 you say, "There are, however, certain requirements established by the Food, Drug, and Cosmetic Act which are applied indirectly by the Bureau."

Now, if the so-called pure food and drug people can regulate your product, to tell you what to do, why can't they do it with all the other products that are food instead of having his bill so far as labeling and the question of whether it is properly labeled or whether it is deceptive and those questions that are covered in this legislation?

Mr. CROWTHER. I am not certain I am in a position to answer that, Mr. Younger.

Mr. YOUNGER. You can't see any reason yourself why that can't be done?

Mr. CROWTHER. I am not sure what the authority is under the Food, Drug, and Cosmetic Act. We use Food and Drug because of course, they are the authority in our field in fisheries and it would not be wise for us to pass on a product that did not come within their regulation.

So in our inspection service when a label is submitted to us we review it and then ask the Food and Drug to review it to make sure it is not in violation of any of their fish.

Mr. YOUNGER. Years ago there was a case of canned salmon, as you know, a certain salmon that are not pink, they are white and they can white. I remember that they carried a label and they were sold in the South and the label said "Canned salmon guaranteed not to turn pink." Is that process still going on?

Mr. CROWTHER. Not that I am aware of, sir.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. No questions.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Thank you, Mr. Chairman.

On page 4, again getting back to the Food and Drug Administration, you referred to "One of the major provisions of this informal agreement provides for FDA to review at BCF's request labels, legends, and stamps from the standpoint of possible conflict with the misbranding provisions of the FDA Act."

The BCF, what does that stand for?

Mr. CROWTHER. Bureau of Commercial Fisheries.

Mr. NELSEN. Now, am I assuming from this that the Food and Drug Administration relative to labels, they do have authority now relative to labeling of fisheries products?

Mr. CROWTHER. They do when the products are shipped in interstate commerce.

Mr. NELSEN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Do you think it is practical to try to package fish in certain set weight?

Mr. CROWTHER. Certain types of fishery products cannot be packaged that way, Mr. Rogers. Fillets, for example, come in all different shapes and sizes and it is essentially impossible for the processor to determine what the weight will be and then to stamp the weight on a wet wrapper or a cellophane wrapper.

Mr. ROGERS of Florida. As I understand from your testimony you would ask that fish be excluded from provisions of this bill as to packaging.

Mr. CROWTHER. Under section 5(b) you would ask that certain fishery products be exempt.

Mr. ROGERS of Florida. I guess that is all.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

I am looking at the bill to see if fish products were not excluded already from the bill that we have under consideration because they are not agriculture products.

Mr. CROWTHER. Fishery products were not excluded, sir.

Mr. KORNEGAY. Does your inspection service relate to frozen fish products as well as fresh fish products?

Mr. CROWTHER. Yes, it does, principally with the packaged products.

Mr. KORNEGAY. Packaged products?

Mr. CROWTHER. Such as our fish sticks.

Mr. KORNEGAY. Frozen or fresh?

Mr. CROWTHER. For the most part they are frozen because of the short period in which the fresh fish will keep. Normally, it is not feasible to inspect them, package them, and label them. Almost all of ours are frozen or some canned.

Mr. KORNEGAY. That is all I have, Mr. Chairman.

Thank you very much.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Crowther, I certainly want to commend you and your Bureau of Commercial Fisheries for the outstanding job you have done over the period of the past 8 years, I believe, that you have had this authority.

Although you say you do not have the direct authority to control packaging and labeling of fishery products under the agreement you have with the FDA, you do not put your label on any package unless it complies with FDA regulations?

Mr. CROWTHER. That is true.

Mr. WATSON. And, of course, you are well aware of the fact that the FDA has authority now to prohibit deceptive and misleading advertising and labeling?

Mr. CROWTHER. That is right.

Mr. WATSON. You are aware of that?

Mr. CROWTHER. Yes, sir.

Mr. WATSON. So although you do not have the authority directly, indirectly, and as a practical matter, you exercise that authority through the FDA?

Mr. CROWTHER. That is correct.

Mr. WATSON. Now, did I understand your counsel to say that there was a bill before the Interior Committee now dealing with this particular matter?

Mr. BRUCE. No. I commented for Mr. Macdonald that there was a bill before Merchant Marine and Fisheries, Mr. Watson, dealing with this fish protein matter. It should be on the floor.

Mr. WATSON. Dealing only with that particular matter?

Mr. BRUCE. Yes.

Mr. WATSON. So I should assume if you were not getting along satisfactory under the present authority that you have, then you would have made a request to Congress to change your authority prior to this time?

Mr. CROWTHER. We have experienced no difficulty in this at all.

Mr. WATSON. You have experienced no difficulty at all?

Mr. CROWTHER. No, sir.

Mr. WATSON. Good. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. I have no questions, Mr. Chairman.

The CHAIRMAN. I wish to thank you, Mr. Crowther, very much, for coming to be with us and giving us the benefit of your views.

You may be excused.

Mr. CROWTHER. Thank you.

The CHAIRMAN. For the information of the committee and others, we will have the panel back tomorrow and we will finish our public hearings on this bill tomorrow. I hope that soon we will get into executive session to discuss this bill.

Thank you very much.

The hearing stands adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 12:03 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, September 8, 1966.)

## FAIR PACKAGING AND LABELING

---

THURSDAY, SEPTEMBER 8, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We are continuing our hearings on fair packaging and labeling bills. This morning we have the panel back with us representing the same group that we had with us some time ago, but the faces look a little different. We want each of you gentlemen to identify yourself. I understand Mr. Hollomon is taking Mr. Connor's place.

Mr. HOLLOMON. Yes, sir. J. Herbert Hollomon, Assistant Secretary of Commerce for Science and Technology.

Mr. SWANKIN. David Swankin, Executive Director, President's Committee on Consumer Interests.

Mr. DIXON. Paul Rand Dixon, Chairman, Federal Trade Commission.

Mr. RANKIN. Winton B. Rankin, Deputy Commissioner, Food and Drug Administration, Department of Health, Education, and Welfare.

**STATEMENT OF HON. JOHN T. CONNOR, SECRETARY, DEPARTMENT OF COMMERCE, PRESENTED BY HON. J. HERBERT HOLLOMON, ASSISTANT SECRETARY OF COMMERCE FOR SCIENCE AND TECHNOLOGY; ACCOMPANIED BY HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN, UNDER SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; DAVID SWANKIN, EXECUTIVE DIRECTOR, PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS; AND WINTON B. RANKIN, DEPUTY COMMISSIONER, FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Mr. HOLLOMON. I think by virtue of default, Mr. Chairman, I become spokesman.

The CHAIRMAN. You may proceed.

Mr. HOLLOMON. I would like to read, sir, a statement of Secretary Connor; it is his statement, and I should like to present it to you. I talked to him yesterday on the phone and he is very distressed that

Mr. HOLLOWAY. Well, Mr. Younger, I would like to refer to my own personal experience. I was in industry for a large number of years and I have been associated with the standardization process, both voluntary and some mandatory processes since I have been in the government, and it is my general observation that the process of developing of standards, generally speaking, is of benefit to both manufacturer and consumer over the long term.

It is true that when one begins a process of improving the standards or units in which measure of quantity and products are manufactured that at some time short-term increase and costs to a particular company might result.

It has been my experience that the whole practice of making it easier for the customer to buy by virtue of having comparisons of products or standards of products has in the long term benefited the American economy, the manufacturer and the consumer.

I believe, Mr. Younger, that in any given item the processes which are specified in this bill for participation of industry, for hearings, for balancing the consumer interests against costs—that is, to take into account costs—will provide a mechanism whereby standards can be developed which will benefit the consumer and not hurt the manufacturer.

Mr. YOUNGER. In regard to the cost, I would say that all of the testimony in general of the manufacturers and producers estimated that about 5 percent would be added to the cost of their products.

Here is a letter which came in from Procter & Gamble when we asked them to give us more definite figures. Their analysts and engineers have evaluated all the company's products that would be affected by the passage of H.R. 15440:

We estimate that based on today's prices for equipment, labor and material the initial cost of new equipment and equipment modifications needed to handle our current tonnage would total \$40 million. We estimate further that the recurring cost to the company thereafter would total \$13 million per year based on today's costs.

Now, that is their specific case and we have testimony from General Foods and the rest of them as to what their costs would be.

Now, the disturbing thing to me is that we had the Agriculture Department which has jurisdiction over all of the meat and poultry and they govern their situation, the labeling, and they have about the same authority that the Pure Food and Drug have under the present Labeling Act.

They are having no trouble either from the manufacturer or from the producer or from standardization.

The Interior Department was here and they have jurisdiction over the production of the fish and marine products and they govern it through the labeling and the consumer is not coming in and pressuring them about those products.

Now, it seems to me from all of the testimony which we have had that if there is anything to be done it should be done in the way of giving additional authority to the Pure Food and Drug if they need it in regard to the control of labeling; they can cover deception but they cannot cover confusion now.

The same thing is true with the Federal Trade Commission and their authority to control deception. If they want to proceed against



the whole industry they should have that right and also they should have the right to properly regulate if purposefully the manufacturer is labeling for confusion.

In other words, labeling for confusion or for deception should be covered in the Labeling Act. It does not seem to me that we need another very large department and that is what I gather from the evidence that has been submitted to us.

Mr. HOLLOMON. Yes, sir. Perhaps Mr. Dixon or Mr. Rankin may want to comment on their aspects of this problem but it seems to me in your question and statement you raise two issues. One is the high costs of conversion if there is such a conversion necessary under the act which has been estimated by various companies and, the second has to do with whether or not the only legislation needed refers to the labeling. I would like to comment on both.

If a company says that all the products that might be affected by this legislation had to be modified in some assumed way in packaging to come up with the cost of, let's say \$40 million that must assume it seems to me, that that company says that those commodity products, those products offered, would be found under appropriate regulatory authority to be confusing the public with respect to price-per-unit comparison at the present time because the determination of how much cost is involved must be based upon how many products are now being offered for sale that are confusing the public. The determination has to be made by the regulatory agency in the first instance that price-per-unit confusion does in fact exist.

Mr. YOUNGER. No. May I interrupt just a minute?

Mr. HOLLOMON. Certainly.

Mr. YOUNGER. You have to take into consideration the standardization as well as the labeling.

Mr. HOLLOMON. Yes, sir. I am only speaking to the standardization issue at the moment.

The assumption of the company that says the fraction of their products would be affected by the standardization of measure or quantity must have assumed that these products were being offered at the market in such a way in such quantities that price-per-unit comparisons were difficult for the consumer because that is the statement of the act in which a finding must be made to that extent.

So the assumption of the company must be in order to make that calculation that a large number of their products are being offered for the market in quantities and measures as to confuse the consumer.

I can't see any other way that they have made their calculation. Now I can't believe that there are that large number or large fraction of their products which are in fact presently confusing the customer.

The CHAIRMAN. The gentleman from California, Mr. Moss.

Mr. Moss. Before the questions I want to make an observation on the testimony presented on behalf of Secretary Connor. I am glad someone raised the matter of the standards which would be involved under section 5.

The conclusions as stated on page 3 I think reflect a matter which should be very clearly emphasized and I am pleased to see it is emphasized.

Now I have a very fine corporate constituent in my district, Procter & Gamble. My colleague from California read the letter. Their

letter responding to a request on, I believe the 24th day of August, reaching the committee on the 2d day of September, was able to make a definitive study of costs for their nationwide operation and come up with a conclusion that it would go in excess of \$40 million and with the reoccurring total costs of some \$13 million.

I want to compliment them on the speed with which they made that analysis.

I would be very much interested, however, and it would be more meaningful to me, if they would supply their hypothesis upon which they base the analysis because at the moment I find it meaningless and I would be inclined just as a matter of caution to challenge any study concluded in such a brief period of time.

Again I want to express my appreciation for the fact that the emphasis is placed that they would have to have a showing that the present packaging did not permit adequate comparison. I can't honestly believe that a system of business which boasts of its dedication to free enterprise and competition in the marketplace should have any fear of the ability to readily compare costs, and I cannot conceive that achieving that clarity in marketing should add to costs.

On the contrary, I think there is equal justification to conclude that it could substantially reduce costs.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Hollomon, and I wish the rest of the witnesses would listen to this also, on page 7 of the bill, if you have it before you, I think everybody on this committee has agreed that this is the guts of the bill as far as packaging is concerned.

Prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof.

Now, Mr. Hollomon, it is your contention that there will not be any increased costs in this under the section or they will be very minor if there are.

Mr. HOLLOWOMON. I have two comments with respect to that. First, we must consider overall costs, it seems to me.

Mr. SPRINGER. Can we get these? I don't want you to take all of my 5 minutes. I am not trying to badger, I would like to ask some more questions.

Mr. HOLLOWOMON. We believe, Mr. Springer, the increased costs spread over a period of time will not be large, that is correct, if at all.

Mr. SPRINGER. All right. Now, were you here when the biscuit people were here and the cracker people?

Mr. HOLLOWOMON. I was not here personally.

Mr. SPRINGER. Do you know about their testimony?

Mr. HOLLOWOMON. I know a little.

Mr. SPRINGER. All right.

You do know they package crackers, that nature or kind of a product in one uniform package which carries a different weight?

Mr. HOLLOWOMON. Yes, sir.

Mr. SPRINGER. Now, under 5, as I read it here, do you say that if there is only 4 ounces in a package which holds 16 ounces that that is deception under this act under which you could then regulate?

Mr. HOLLOMON. This is a complicated matter. I think it may require a somewhat complicated answer. I will try to give the best answer I can, Mr. Springer.

Mr. SPRINGER. Let me ask you this, Mr. Hollomon: Under this bill, I don't know how in plain language a lawyer could read it and come to any other conclusion if you put 4 ounces into a 16-ounce package that is deception under this act.

I don't say it is deception but it certainly would be under the language of this act.

Mr. HOLLOMON. Are you speaking to the section now, 5(c)(5), sir?

Mr. SPRINGER. Talking about 5.

Mr. HOLLOMON. 5 of the House bill?

Mr. SPRINGER. Right, on page 7.

Mr. HOLLOMON. This is a section that is in the House bill and not in the Senate bill.

Mr. SPRINGER. All right. That is the point I am talking about. Now I am trying to get from you, under the language of this if you put 4 ounces of crackers in a 16-ounce box, isn't that deception under this for commodities you regulate?

Mr. HOLLOMON. If that is deceiving, yes. It would be regulated under this section.

Mr. SPRINGER. If you submitted this to a jury would they not say this was, under this language—I don't say it is deceiving because they put 4 ounces and they charge you 21 cents and it is properly labeled.

I claim that is not deception but under the language of this act it could be deception and you could regulate.

Are we agreed on that?

Mr. HOLLOMON. I think so.

Mr. SPRINGER. All right. Let's come back to costs, because, Mr. Hollomon, nobody who has come before this committee has answered this question.

Now, it was very clear and anybody with commonsense I think would come to the same conclusion, that if this is, then they have to set up four different packages of crackers, they have to have four different packages.

Now this question of cost they are talking about four packages, not one package, and they are saying that is going to increase costs.

Now, can you answer that?

Mr. HOLLOMON. Mr. Springer, this action to which you are referring is not included in the Senate-passed bill. Our position with respect to that section is that we would be satisfied to accept the thrust of the Senate-passed bill without that section but if it is in the wisdom of this committee that that section ought to be included to protect the consumer, we would accept it.

Mr. SPRINGER. Mr. Hollomon, I am glad to hear that because if you said this on the first time around here I missed it. I don't believe I did, because I don't think anybody has ever told me that before.

Mr. DIXON. You missed it. You were told that a half dozen times.

Mr. SPRINGER. I am willing to accept that. A great deal of this revolves around this particular section.

Mr. HOLLOMON. Mr. Springer, I think the Secretary testified at the earlier testimony supported, I believe, by Mr. Dixon, and at that time Mr. Cohen, that the position was that we would be satisfied with the general thrust and not every detail of the Senate-passed bill which did not include this section.

Mr. SPRINGER. I am glad to hear that because the White House told me not over a week ago that they did not see how the bill could work without that.

Mr. HOLLOMON. We are referring now specifically to 5(c)(5) which is page 7, the fifth item.

Mr. SPRINGER. No. 5, that is correct.

Mr. HOLLOMON. I think I can state, and I would like Mr. Dixon or anyone else on the panel to speak for himself, that that section is not included in S. 985, the Senate-passed bill. We encourage this committee to study and pass the Senate-passed bill. This is an additional section in the bill which if this committee would in its wisdom decide to put in the bill it would be acceptable.

Mr. SPRINGER. Now we are talking about lines 11 through 16 on page 7.

Mr. HOLLOMON. Yes, sir.

The CHAIRMAN. I might say to the gentleman that the committee is going to write this bill.

Mr. HOLLOMON. Yes, sir; I was trying to say that. If I implied otherwise, Mr. Chairman, I didn't mean to.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Gentlemen, I note here that I have before me a comparison of the Fair Packaging and Labeling Act with, first of all, the Federal Trade Commission Act, and then the Federal Food, Drug, and Cosmetic Act.

Mr. Chairman, are these comparisons a matter of record at this time?

The CHAIRMAN. I didn't understand the gentleman.

Mr. DINGELL. Are the comparisons that we have here before us, I think drawn by the committee staff, a matter of record?

The CHAIRMAN. No, they are not.

Mr. DINGELL. Would it be appropriate, Mr. Chairman, that those comparisons be a matter of record?

The CHAIRMAN. Well, if the gentleman was here yesterday, we had comparisons between the meat and poultry inspection acts and the provisions of H.R. 15440.

Mr. DINGELL. I see.

I would ask to have all of them made a matter of record.

The CHAIRMAN. Without objection, it is so ordered.

(The material referred to follows:)

## FAIR PACKAGING AND LABELING ACT

*Comparison of H.R. 15440 with present provisions of Federal Food, Drug, and Cosmetic Act*

## PROVISIONS OF H.R. 15440

## PRESENT LAW WITH REGARD TO FOODS, DRUGS, AND COSMETICS

(Sec. 4 directs Food and Drug Administration to issue regulations with respect to the following:)

Sec. 4(a) (1) : Label must identify commodity and name and place of business of manufacturer, packer, or distributor.

Sec. 4(a) (2) : Net quantity must be stated on principal display panel.

Sec. 4(a) (3) (A) : On commodities containing less than 4 pounds, or less than 1 gallon, the content must be expressed (in order to facilitate cost-per-unit comparisons) in ounces, or whole units of pounds, pints, or quarts.

Sec. 4(a) (3) (B) : Quantity content statement must be in contrast with background.

Sec. 4(a) (3) (C) : Statements must be in type size proportional to display panel and such type size must be uniform for all packages of substantially the same size.

Sec. 4(a) (3) (D) : Statements must be parallel to the base on which package rests when displayed.

Sec. 4(b) : Prohibition of qualifying words in connection with net quantity statement ("giant quart," for example).

Present law contains same requirements : foods, sec. 403 (e) (1) ; drugs, sec. 502 (b) (1) ; cosmetics, sec. 602 (b).

Present law requires net quantity statement but does not require that such statement be located on the principal display panel : foods, sec. 403 (c) (2) ; drugs, sec. 502 (b) (2) ; cosmetics, sec. 602 (b) (2).

Present law requires accurate statement of content in terms of weight, measure, or numerical count, but does not require statement in ounces, which would facilitate price-per-unit comparisons : foods, sec. 403 (c) (2) ; drugs, sec. 502 (c) ; cosmetics, sec. 602 (c).

Present law requires statement to be prominently displayed and to be conspicuous but does not specifically refer to distinct contrast with other matter on the package : foods, sec. 403 (f) ; drugs, sec. 502 (c) ; cosmetics, sec. 602 (c).

Present law requires statement to be prominently displayed and to be conspicuous but does not specifically refer to type size and uniformity for all packages of same size : foods, sec. 403 (f) ; drugs, sec. 502 (c) ; cosmetics, sec. 602 (c).

Present law requires statement to be prominently displayed and conspicuous but does not require that statement appear parallel to base : foods, sec. 403 (f) ; drugs, sec. 502 (c) ; cosmetics, sec. 602 (c).

General prohibition that label must not be "false or misleading in any particular" but no specific prohibition with regard to qualifying words or phrases appearing in conjunction with statement of quantity : foods, sec. 403 (a) ; drugs, sec. 502 (a) ; cosmetics, sec. 602 (a).

*Comparison of H. R. 15440 with present provisions of Federal Food, Drug, and Cosmetic Act—Continued*

PROVISIONS OF H. R. 15440—continued

(Sec. 5(c) authorizes the Food and Drug Administration, in order to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, to issue regulations with regard to the following:)

Sec. 5(c) (1) to establish standards for size characterizations such as "large," "medium," "small,"

Sec. 5(c) (2) to define "serving."

Sec. 5(c) (3) with regard to "cents-off" or "economy size."

Sec. 5(c) (4) involving information with respect to percentages (see Senate committee report) of ingredients and composition except in case of situations involving proprietary trade secrets.

Sec. 5(c) (5) to prevent distribution of commodities in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchaser as to net quantity.

Sec. 5(d): Authority to determine that there is proliferation to such an extent of the weights or quantities in which a particular consumer commodity is distributed as to impair the ability of consumer to make price-per-unit comparisons. (Industry may then initiate voluntary product standards procedures; if such standards are adopted but are not adhered to by industry, agency may then issue regulations setting forth those standards, and then may proceed to enforce them.)

PRESENT LAW WITH REGARD TO FOODS, DRUGS, AND COSMETICS—CON.

No comparable authority to promulgate regulations. Only possibility of case-by-case action if statement is false or misleading.

Do.

Do.

Statement of ingredients is required but no specific authority to require statement in terms of percentages of product: foods, sec. 403 (g) and (1); drugs, sec. 502 (d) and (e); cosmetics, no requirement for ingredients statement with regard to cosmetics. Present law contains no exceptions involving proprietary trade secrets.

No comparable provision. Secretary may establish reasonable standards of fill of container for foods (sec. 401) but not for drugs and cosmetics.

No comparable authority.

*Comparison of H.R. 15440 with the present provisions of the Federal Trade Commission Act*

PROVISIONS OF H.R. 15440

(Sec. 4 directs the Federal Trade Commission to promulgate regulations pertaining to the distribution in commerce of any consumer commodity (as defined in this act) which is not a food, drug, device, or cosmetic, as each such term is defined by sec. 201 of the Food, Drug, and Cosmetic Act (21 U.S.C. 312) with respect to the following:)

Sec. 4(a) (1) : The commodity must bear a label specifying the identity of the commodity and the name and place of business, the manufacturer, packer, or distributor.

Sec. 4(a) (2) : Net quantity must be stated on principal display panel.

Sec. 4 (a) (3) (A) : On commodities containing less than 4 pounds, or less than 1 gallon, the content must be expressed (in order to facilitate cost-per-unit comparisons) in ounces, or whole units of pounds, pints, or quarts.

Sec. 4(a) (3) (B) : Quantity content statement must be in contrast with background.

Sec. 4(a) (3) (C) : Statements must be in type size proportional to display panel and such type size must be uniform for all packages of substantially the same size.

Sec. 4(a) (3) (D) : Statement must be parallel to the base on which package rests when displayed.

Sec. 4(b) : Prohibition of qualifying words in connection with net quantity statement ("giant quart," for example).

(Present statutory authority of the Federal Trade Commission with regard to consumer commodities (as defined by this act) other than food, drug, device, and cosmetic.)

(Under sec. 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45) unfair methods of competition and unfair acts or practices in commerce are declared unlawful.)

PRESENT LAW

The Federal Trade Commission Act does not grant the Commission specific authority to issue such a regulation.

Under the aforementioned sec. 5(a) (1) of the Federal Trade Commission Act, the Commission in a case-by-case proceeding against individual manufacturers may, where it has jurisdiction, require the disclosure of the information specified in this subsection, if the Commission finds that the failure to disclose affirmatively such information is deceptive or likely to be deceptive.

The authority of the Commission to issue trade regulation rules, as the Commission did with reference to cigarette labeling and advertising, has never been passed on in the courts. Present law is as heretofore given.

Do.

Do.

Do.

Do.

Do.

*Comparison of H.R. 15440 with the present provisions of the Federal Trade Commission Act—Continued*

PROVISIONS OF H.R. 15440—continued

(Sec. 5(c) authorizes the Federal Trade Commission to promulgate regulations pertaining to any consumer commodity, except those pertaining to food, drug, device, or cosmetic, to be in addition to the regulations prescribed by sec. 4 where it determines such regulations "are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity.")

Sec. 5(c)(1) to establish standards for size characterizations such as "large," "medium," "small."

Sec. 5(c)(2) to define "serving."

Sec. 5(c)(3) with regard to "cents-off" or "economy size."

Sec. 5(c)(4) involving information with respect to percentages (see Senate committee report) of ingredients and composition except in case of situations involving proprietary trade secrets.

Sec. 5(c)(5) to prevent distribution of commodities in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers as to net quantity.

Sec. 5(d) authority to determine that there is proliferation to such an extent of the weights or quantities in which a particular consumer commodity is distributed as to impair the ability of consumer to make price-per-unit comparisons. (Industry may then initiate voluntary product standards procedures; if such standards are adopted but are not adhered to by industry, agency may then issue regulations setting forth those standards, and then may proceed to enforce them.)

PRESENT LAW—continued

(Under the aforementioned sec. 5(a)(1) of the Federal Trade Commission Act, the Commission has statutory authority in the manner hereinbefore noted on a case-by-case basis with regard to deception but has none with reference to the facilitation of price comparison.)

The present law is as heretofore given with reference to the mandatory regulations prescribed in the subsections of sec. 4.  
The present law is as heretofore given with reference to sec. 5(c)(1).

The present law is as heretofore given with reference to sec. 5(c)(1).  
The present law is as heretofore given with reference to sec. 5(c)(1).

The present law is as heretofore given with reference to sec. 5(c)(1).  
The present law is as heretofore given with reference to sec. 5(c)(1).

The present law is as heretofore given with reference to sec. 5(c)(1).  
The present law is as heretofore given with reference to sec. 5(c)(1).



*Comparison of H.R. 15440 with the present provisions of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.)*

PROVISIONS OF H.R. 1544

(Sec. 4 directs Food and Drug Administration to issue regulations with respect to the following:)

Sec. 4(a)(1): Label must identify commodity and name and place of business of manufacturer, packer, or distributor.

Sec. 4(a)(2): Net quantity must be stated on principal display panel.

Sec. 4(a)(3)(A): On commodities containing less than 4 pounds, or less than 1 gallon, the content must be expressed (in order to facilitate cost-per-unit comparisons) in ounces, or whole units of pounds, pints, or quarts.

Sec. 4(a)(3)(B): Quantity content statement must be in contrast with background.

Sec. 4(a)(3)(C): Statements must be in type size proportional to display panel and such type size must be uniform for all packages of substantially the same size.

Sec. 4(a)(3)(D): Statements must be parallel to the base on which package rest when displayed.

PRESENT LAW WITH RESPECT TO POULTRY PRODUCTS

Present law requires<sup>1</sup> immediate containers to show the name and address of the "processor" but permits alternatively the use of the name and address of the "distributor" under specified conditions; also requires the name of the product. Sec. 8(a) (21 U.S.C. 457(a)).

Present law requires<sup>1</sup> a statement of net weight or other appropriate measure of the contents to appear on immediate containers. Sec. 8(a) (21 U.S.C. 457(a)). Under present law, approval of labels before use is required. Sec. 8(b) (21 U.S.C. 457(b)); (7 CFR 81.125). Under this procedure, the statement of net weight is required to appear on the principal display panel.

See comment relating to sec. 4(a)(2). Present law does not require content to be expressed in ounces or whole units of pounds, pints, or quarts. Sec. 8(a) (21 U.S.C. 457(a)). Under the approval-before-use procedure the Department uses as guidelines model regulations of the Bureau of Standards pertaining to labeling of consumer products.

See comment relating to sec. 4(a)(2). Present law requires the quantity content statement to be in distinctly legible form. Sec. 8(a) (21 U.S.C. 457(a)). Under approval-before-use procedure, such statement is required to be in contrast with background.

Present law requires statements to be in distinctly legible form. Sec. 8(a) (21 U.S.C. 457(a)). Under approval-before-use procedure, type size and uniformity are considered in approving labels. (7 CFR 81.127).

Present law requires statements to be in distinctly legible form. Sec. 8(a) (21 U.S.C. 457(a)). Under approval-before-use procedure, the requirement prevails that statements be parallel to the base on which the package rests when displayed.

<sup>1</sup> The Secretary of Agriculture is authorized to permit reasonable variations and grant exemptions from labeling requirements of the act (sec. 8(a) (21 U.S.C. 457(a))).

*Comparison of H.R. 15440 with the present provisions of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.)—Continued*

PROVISIONS OF H.R. 15440—Continued

Sec. 4(b) : Prohibition of qualifying words in connection with net quantity statements ("giant quart," for example).

(Sec. 5(c) authorizes Food and Drug Administration to issue regulations with regard to the following:)

Sec. 5(c) (1) to establish standards for size characterizations such as "large," "medium," "small,"

Sec. 5(c) (2) to define "serving."

Sec. 5(c) (3) with regard to "cents off" or "economy size."

Sec. 5(c) (4) involving information with respect to percentages (see Senate committee report) of ingredients and composition except in case of situations involving proprietary trade secrets.

Sec. 5(c) (5) to prevent distribution of commodities in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchaser as to net quantity.

PRESENT LAW WITH RESPECT TO POULTRY PRODUCTS—Continued

Present law prohibits use of false, misleading, or deceptive labels. Sec. 8(b), 9(d), (21 U.S.C. 457(b), 458(d)). Under approval-before-use procedure, such qualifying words are considered misleading and deceptive, and therefore are prohibited.

No comparable authority except that insofar as statement is false or misleading sec. 8(b) would apply.

See comment relating to sec. 5(c) (1).

See comment relating to sec. 5(c) (1). In this regard, the Department under approval-before-use procedure has required that manufacturers submit satisfactory evidence that there was no change in product formula or quality, and that the base price to which the "cents off" applies also be shown on the label.

Statement of ingredients on immediate containers is required by present law. It does not specifically require statement in terms of percentages of product. The regulations under present law require that ingredients be listed in order of their descending proportions (7 CFR 81.130(a) (2)). Present law makes no exception from labeling requirements for proprietary trade secrets.<sup>1</sup> Sec. 8(a), (21 U.S.C. 457(a)).

Present prohibitions against false, misleading, or deceptive labels authorize control in this respect. Secs. 8(b), 9(d) (21 U.S.C. 457(b), 458(d)). The regulations prohibit distribution of commodities in containers which are likely to deceive (7 CFR 81.131).

<sup>1</sup> See footnote 1, p. 1.

Sec. 5(d) : Authority to determine that there is proliferation to such an extent of the weights or quantities in which a particular consumer commodity is distributed as to impair the ability of consumer to make price-per-unit comparisons. (Industry may then initiate voluntary product standards procedures; if such standards are adopted but are not adhered to by industry, agency may then issue regulations setting forth those standards, and then may proceed to enforce them.)

*Comparison of H.R. 15440 with the present provisions of the Meat Inspection Act, as amended, extended and supplemented (21 U.S.C. 71-91, 96; 19 U.S.C. 1506 (b) and (c))*

PROVISIONS OF H.R. 15440

(Section 4 directs Food and Drug Administration to issue regulations with respect to the following:)

The present regulations have no provisions limiting the weights or quantities in which poultry or poultry products may be distributed. Under approval-before-use procedure, however, variations from customary retail weights which might have such result, are required to be stated on the label in large print so as to alert the consumer.

(The present act prohibits (21 U.S.C. 75) the sale under a false or deceptive name, in interstate or foreign commerce, of meat or meat food products packed in containers at federally inspected establishments but permits the use of established trade names usual to such products if they are not false and deceptive and if they are approved by the Secretary of Agriculture. The act also authorizes (21 U.S.C. 89) regulations necessary to the efficient execution of its provisions and inter alia prohibits (21 U.S.C. 79) unauthorized use or failure to use labels provided for in the act or the regulations thereunder on products subject to the act, or the containers thereof. Under these provisions and others requiring marks of Federal inspection (chiefly 21 U.S.C. 72, 74, 78) regulations and published instructions<sup>1</sup> have been issued specifying information required to appear on meat and meat food products subject to the act, or on labels on the containers thereof (9 CFR pts. 316, 317) and requiring submission to and approval by the Department of labels prior to use (9 CFR 317.4).)

Present regulations require labels showing the true name of the product and the name and place of business of the manufacturer, packer, or person for whom the product is prepared (9 CFR 317.1, 317.2).

Sec. 4(a)(1) : Label must identify commodity and name and place of business of manufacturer, packer, or distributor.

<sup>1</sup> Manual of Meat Inspection Procedure, hereinafter referred to as "MMIP."

*Comparison of H.R. 15440 with the present provisions of the Meat Inspection Act, as amended, extended and supplemented (21 U.S.C. 71-91, 96; 19 U.S.C. 1306 (b) and (c))—Continued*

PROVISIONS OF H.R. 15440—continued

Sec. 4(a) (2) : Net quantity must be stated on principal display panel.

Net quantity statements are required to be stated on the principal display panel (MMIP 317.10 (a), (c)). Present regulations require that a net quantity statement must not be false or deceptive; must represent in terms of avoirdupois weight or liquid measure the quantity of product in the package exclusive of materials packed with it; in absence of contrary consumer usage, must be in terms of liquid measure, if the product is liquid, or in terms of weight if the product is solid, semisolid, viscous or a mixture of solid and liquid. The regulations provide that unless the statement is qualified to show that it expresses the minimum quantity, it shall be taken to express the actual quantity; when the statement expresses the minimum quantity, no variation below shall be permitted and variations above the stated minimum shall be no greater than consistent with filling the container to the stated minimum in accordance with good commercial practice; and when the statement expresses actual quantity, variations incident to packaging in accordance with good commercial practice shall be allowed but the average shall not be less than the quantity stated. Different provisions are applicable to products prepared for foreign commerce. (9 CFR 317.8(d), 317.7).

Regulations and published instructions provide that labels are approved only if the statement of net weight or measure is expressed in the largest applicable unit, e.g., 1 pound instead of 16 ounces, 1 pound 4 ounces instead of 20 ounces. (9 CFR 317.4, 317.6, 317.8(d); "MMIP" 317.25.).

Under approval-before-use procedure provided for by 9 CFR 317.4, labels are not approved unless the quantity content statement is in contrast with background. (MMIP, 317.10(d) and (e)).

Under approval-before-use procedure (9 CFR 317.4) statements must be large enough, consistent with size of package, to be easily read under normal display conditions, and in proportion to display panel.

Sec. 4(a) (3) (A) : On commodities containing less than 4 pounds, or less than 1 gallon, the content must be expressed (in order to facilitate cost-per-unit comparisons) in ounces, or whole units of pounds, pints, or quarts.

Sec. 4(a) (3) (B) : Quantity content statement must be in contrast with background.

Sec. 4(a) (3) (C) : Statements must be in type size proportional to display panel and such type size must be uniform for all packages of substantially the same size.

Sec. 4(a) (3) (D) : Statements must be parallel to the base on which package rests when displayed.

Sec. 4(b) : Prohibition of qualifying words in connection with net quantity statement ("giant quart," for example).

(Sec. 5(c) authorizes food and drug administration to issue regulations with regard to the following :)

Sec. 5(c) (1) to establish standards for size characterizations such as "large," "medium," "small."

Sec. 5(c) (2) to define "serving."

Sec. 5(c) (3) with regard to "cents-off" or "economy size."

Sec. 5(c) (4) involving information with respect to percentages (see Senate committee report) of ingredients and composition except in case of situations involving proprietary trade secrets.

Sec. 5(c) (5) to prevent distribution of commodities in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchaser as to net quantity.

Sec. 5(d) : Authority to determine that there is proliferation to such an extent of the weights or quantities in which a particular consumer commodity is distributed as to impair the ability of consumer to make price-per-unit comparisons. (Industry may then initiate voluntary product standards procedures; if such standards are adopted but are not adhered to by industry, agency may then issue regulations setting forth those standards, and then may proceed to enforce them.)

<sup>3</sup> However, the prohibitions in the regulations against false or deceptive or origin, are applicable (9 CFR 317.8 (a), (c) and (d)).

Under approval-before-use procedure (9 CFR 317.4) statements must be so positioned as to be easily read under normal display conditions.

President regulations prohibit the use of such qualifying statements with respect to net quantity. (9 CFR 317.8(c).)

There are no comparable standards in the present regulations.<sup>3</sup>

There is no present definition of a "serving" in the present regulation.<sup>3</sup>

There is no specific restriction with respect to "cents off" or "economy size" representations in the present regulations.<sup>3</sup> In this regard, however, the Department, under the approval-before-use procedure, requires that there be no change in the product formula and that the label show the base price to which the "cents off" applies.

The present regulations require a list of ingredients, arranged in the order of their predominance, with special provisions for spices and flavorings. There is no requirement that percentages be shown and no exception for proprietary trade secrets. (9 CFR 316.14, 317.1, 317.2)

Present regulations prohibit such distribution. (9 CFR 317.6; 317.8(c); MMIP, 317.26; 317.31)

The present regulations have no provisions limiting the weights or quantities in which meat or meat food products may be distributed. Under approval-before-use procedure, however (9 CFR 317.4), variances from customary retail weights which might have such result, are required to be stated on the label in large print so as to alert the consumer. (MMIP, 317.30).

quantity statements, and false or deceptive names or statements of quality

Mr. DINGELL. Gentlemen, I would to discuss with you very succinctly, if I could, the differences between H.R. 15440 and the present provisions in the Federal Trade Commission Act and also the present provisions of the Food, Drug, and Cosmetic Act, as amended.

Perhaps I could first direct my questions to Mr. Dixon.

Mr. Dixon, section 4 of the Federal Trade Commission Act directs that Commission to promulgate regulations pertaining to the distribution in commerce of any consumer commodity which is not a food, drug, and cosmetic.

Does that afford you the regulatory authority that you would have under H.R. 15440 in all particulars, and if you do not have authority over the commodities in commerce, what additional authorities would you need to afford your agency authorities to provide protection to consumers of the type which would be afforded by H.R. 15440?

In other words, what I want to know is, if H.R. 15440 is reenacted, how much would be new authority to the Federal Trade Commission? Now perhaps before you answer that question I should say to Mr. Rankin that I would like to have a similar answer from Food and Drug over those commodities which are under the scope of the jurisdiction of your particular agency.

Mr. Dixon. Mr. Dingell, the best way to answer it is to say to you that under the authority we have today to proceed against deception is contained in section 5(a) (1) of our act.

There our act reads, "Unfair methods of competition in commerce and unfair or deceptive acts or practices are hereby declared unlawful." That is the law.

Now we have today the responsibility to proceed against deceptive practices. That is quite obvious; it could not be stated any plainer than it is stated in the act today, but the bill H.R. 15440, and the Senate bill, S. 985, sets a new way of procedure.

We customarily proceed in the ultimate on a case-by-case method. Also, in both bills there is a new test, a new command. In the legislation, that in addition to deception we have in section 5(c) the language which says, among other things, "are necessary to prevent the deception of consumers or to facilitate price comparisons."

Now this is new language, this is new instruction, and this would be obviously a new command by legislation for the Commission to proceed on something that goes beyond deception perhaps in the ordinary way that deception is understood today in the law of commerce.

So it would be quite a different procedure. Here it is very clearly rulemaking authority if these limited fields are granted. We have no ultimate rulemaking authority across the board on deceptive practices as such.

Now we have rulemaking authority in those four consumer acts that you passed, as I pointed out, the Wool Products Act, the Fur Products Act, the Flammable Act, and the Textile Identification Act.

Under legislation you commanded us in the preamble as to the purpose of it then said following certain guidelines, we promulgate certain rules, regulations, and in connection with the fur list promulgated a list of acceptable fur products and after that has been done then if anyone that deviates from that, this per se, would violate section 5 of the Federal Trade Commission Act.

Now you put that same counterapproach here in these two bills. You say you are granting, so far as we would be concerned in the bill, certain responsibility where after hearings we think that there is the need that fits one of these tests that we would give notice of such a hearing.

Then based upon that hearing, if we thought it was necessary we would make a finding, we would issue a regulation. Then if that regulation were to be violated, it would be a per se violation of section 5 and all we would do is say, "You violated the regulation which was duly promulgated under this legislation."

Mr. DINGELL. What you are saying here, very simply put, is you cannot reach the violations that we are discussing under existing law except on a case-by-case basis.

Mr. DIXON. Not on the scale that that legislation envisions.

Mr. DINGELL. And that would enable, rather than that piecemeal approach, a broad regulatory approach by issuance of appropriate regulation at a proper hearing.

Mr. DIXON. I tried to point out, Mr. Dingell, I think this is a fair approach, basically. We try through our practices today to go as far in this direction as we can but we can't go as far as this bill would allow us to go today.

Mr. DINGELL. Can you make a statement as to whether or not you have, according to issue, broad regulations after a proceeding in the Federal Trade Commission?

Mr. DIXON. I came before this committee some time ago after the promulgation of a trade regulation rule on the advertising of cigarettes and spoke in great detail when I appeared here.

Then I explained how and what our authority was for that procedure, what we had done and what it meant. What it meant was that we had had a hearing notice in the Federal Register, given every proper party the opportunity to come and testify. We took notice of all of our past background experience, all the public information we had, and we made a finding that it was wrong to sell or advertise cigarettes without revealing the dangers of smoking.

Now what would we have done had that been violated or they had paid no attention to it? We would have had to go on a case-by-case method, technically speaking, and we would have hoped to have made use of that trade regulation procedure to speed that case up, but we could never have made the use that we could make under similar authority that is granted here.

Mr. DINGELL. You also would have found in your fundamental authority, your agency, that to issue that trade regulation was subject to attack, would you not?

Mr. DIXON. Oh, we found that from everyone who came before this committee, in fact, all of the cigarette companies refused to appear during the hearing, they sent their lawyer.

The lawyer says, "You don't have the right, this violates the Constitution." I wish they had taken it to the court. I am satisfied we had the right.

Mr. DINGELL. I see. I know, Mr. Chairman, I am a little beyond my time.

Mr. Rankin, could you give us a brief comment as to the same points under the Food, Drug, and Cosmetic Act, as amended?

Mr. RANKIN. The bill, Mr. Dingell, gives us the authority with respect to foods, drugs, and cosmetics to proceed by regulations specifying the conditions that must be met so that we proceed across the board rather than a case-by-case basis, as Chairman Dixon mentioned.

In addition, there are several specific authorities granted in the bill that are not presently in the Food, Drug, and Cosmetic Act.

Mr. DINGELL. Could you name those for us, please?

I am sorry, Mr. Chairman, about taking so much time.

Mr. RANKIN. The examples of those would be that the requirement of the net content have to be stated separately and accurately in the principal display panel of the package.

The requirement that the net quantity statement be in terms of ounces or whole units of pounds, pints, or quarts, for certain size categories is a second example.

The prohibition against qualifying words in conjunction with the net quantity of contents statement and the authority to issue additional regulations after determining that they are necessary to prevent consumer deception or facilitate price comparisons is also a new authority.

The power to define standards for characterizing the size of a package; that is, such characterization as small, medium, or large, is also one that we do not now have.

And the authority to define the net quantity of a product that will constitute a serving in the case of food and regulate cents-off labeling is new.

Mr. DINGELL. Just one last thing, Mr. Chairman.

Perhaps further information, if you could submit it, would be appropriate and could be placed in the record at this point on the subject of the questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

To Mr. Hollomon, in your answer to Mr. Springer's question relative to standardization of size and weights you indicated a willingness to go either way, either with the Senate bill or the House bill, did you not?

Mr. HOLLOMON. Yes, sir.

Mr. NELSEN. I am interested in knowing which of the two do you recommend?

Mr. HOLLOMON. Our position is that we would recommend to you the Senate bill and that has been the position all along. Taking the chairman's admonishment, of course, that we would also say that the addition of that section would be acceptable, we don't think it is necessary but we would prefer the Senate bill.

Mr. NELSEN. I asked the question because much of the mail that we get deals with the assumption that you are going to deal with standardization of the package size and weights. One of my criticisms of the approach that has been made in this bill is that the public has been fed quite a line and I am glad to know now that you are suggesting that you take the Senate bill which eliminates the feature that I think would be impossible to enforce because of the variation in texture of products that are in a package.



I would like to proceed to the testimony of the Secretary to page 2 in which you state, "This legislation, the major thrust of which will require improved labels."

Now, this confuses me a little bit because I didn't know that there was any need of legislation in the area of labels. Now what is it that you have in mind, the size of print or just what is it that we need in the law now to give the public a better chance to understand what is in a package?

Mr. HOLLOWOM. It seems to me that part of this question has already been answered, it refers specifically to section 4; more specifically to section 4, (1), (2), (3), (a), (b), (c), and (d) which state that it has to do with labels, it specifies the name and place of business, and so forth, and contents separately and accurately stated and certain weight or quantity must be expressed in certain ways, must be conspicuous, and there shall be nothing on the label to add additional information which would serve to mislead or make—

Mr. NELSEN. Under section 403, misbranded foods, do you feel that the language there is inadequate?

Mr. HOLLOWOM. That is the section in the Federal Drug Administration. Could I refer that to Mr. Rankin?

Mr. NELSEN. Yes. I have in mind subsection (f)—

If any word, statement or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, design or devices in the label).

Then it goes on and says—

In such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase or use.

This is very broad language.

Mr. HOLLOWOM. I would refer that to Mr. Rankin, if I may.

Mr. NELSEN. Yes.

Mr. RANKIN. Mr. Nelsen, this section of the Food, Drug, and Cosmetic Act is one under which we have tried to bring about fully conspicuous and fully informative labeling.

We have issued section 1.9, title 21, of the Code of Federal Regulations, to explain in some detail what the Government believes should appear on food labels in response to this requirement of law, but as yet the packages in the marketplace, we are told, are still confusing to consumers.

For example, the net weight statements do appear at various places on different packages. The bill before you, as you know, would require the net weight statement to be placed at one point on the principal panel, the bill would allow a more definitive definition of type size than we have ever arrived at. There would be opportunity for—

Mr. NELSEN. I don't want to use up too much of my time but may I ask, you state that you are informed that packages still do appear and do not comply in effect with this language and have you brought action against those who may not have complied with what you deem to be a proper attitude as far as the—

Mr. RANKIN. We have brought actions in the Federal courts and we have lost actions of this type. We have won some of them. I recall

one case involving a candy bar with an aluminum foil wrapper and with the necessary information printed on it in silver letters, and the letters were small, too.

Unless the light happened to hit those letters at just the right angle it was virtually impossible to read the labeling on the wrapper. We lost that case in the Federal court.

Mr. NELSEN. Another provision in section 403, and I will read the language:

It is deemed to be misbranded if smallness or style of type in which such word, statement or information appears, insufficient background contrast, obscuring design of vignettes or crowding with other written, printed or graphic matter.

This is in the law now. Now the thing that just bugs me is that we seem to be proceeding with the idea that if we have presently on the books a law that is being violated, shall we pass another law to make it still more illegal? I don't quite get it just exactly how you are going to get better enforcement by passing another law to say what is already in existing law.

Mr. Dixon seems to be very amused and I would be glad to have him explain why he is having such a real good laugh.

Mr. DIXON. Well, I suggested to him it will straighten out some of these confused district judges. [Laughter.]

Mr. NELSEN. May I suggest perhaps we should have an amendment to the bill that would take into consideration confused judges. May I suggest that? [Laughter.]

Mr. YOUNGER. Will the gentleman yield?

Mr. NELSEN. Yes.

Mr. YOUNGER. The Congress does not appoint judges. [Laughter.]

Mr. DIXON. Well, sir; I would like to make one explanation there, if you will let me, since I made that remark. I am generally aware of the difficulty that the Food and Drug Administration has had in enforcing the sections that you have called to their attention, sir.

Now under their procedures when they are forced to it, they must shift gears and go and get a man from the Department of Justice and go into the district court. District courts or district judges are very human, sir. They have such a broad vista of laws to enforce, how in the world you could expect them to be the expert down to a gnat's hair in the broad area of deception, it is pretty difficult to encompass that kind of a—

Mr. NELSEN. Mr. Dixon, I would say that I fail to accept the theory that our regular court system is inferior to a regulatory agency. I think that most of us have experienced arbitrary administrators in bureaucracy of government.

I think, however, our democracy has proceeded perhaps much better than if we move in the direction of excessive authority on the part of bureaucracy.

Now under the enforcement section of this bill, as I understand it, you go back to section 5(b) of the Federal Trade Act in which you will be given the authority to just arbitrarily, if you wish, say you are in violation and you cease to desist.

In my judgment, you have violated the regulation which has been set up by this so-called voluntary set of rules and I am a little

disturbed about that because as I recall, in this very committee, even as a separate labeler in antitrust legislation, we have been rather careful not to move too far into the area of cease and desist, which can be very arbitrary.

However, I would hardly be in a position to argue with a lawyer about it.

Mr. DIXON. I will point out to you, sir, I have said it before, the drafters of these bills were very careful in circumscribing them with judicial review. If ever procedures of safeguards were built into legislation, they are in this legislation. I have a hard time understanding why the industry is so disturbed about it.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

As I understand, basically, the only really new authority would be in section 5(d), although your procedures would be changed somewhat, but the basic authority would be in which it goes to standardization of weights and quantities.

Mr. DIXON. Section 5(c), not (d). Both (c) and (d).

Mr. ROGERS of Florida. Yes, both go to weights and quantities but I thought basically 5(d) was the——

Mr. DIXON. I tried to point out, Mr. Rogers, in 5(c) there are two tests; one is deception of the consumer, and the new test to facilitate price comparison is there.

Mr. ROGERS of Florida. Yes. Now let me ask this: Why would it not be better for us to put emphasis rather not on how many ounces, whether it has to be in even ounces, to put emphasis on a standardization of servings so that if we could come up with a determination on how appropriate servings should be listed or labeled in a package.

Would this not be more informative to the housewife than how many ounces? For instance, if we have a standardization, say, of Federal Trade, Food and Drug, say if there are so many cupfuls or so many spoonfuls or makes an 8-inch cake, don't you think this would be more informative to the housewife than to say that we just simply can't have a package with 1 pound 8 ounces or it must be stated instead 24 ounces?

Mr. DIXON. I would be hard put to say that this committee could not adopt another standard of some language that would not result in improving or assuring the ability of the consumer to compare. I think it could possibly be done as you are talking but certainly readily comes to mind the language or the thought in 5(d) that ounces—in other words, if you have a 13-ounce package and I have a 14-ounce package and we have a different price, most people can engage in simple division.

Mr. ROGERS of Florida. Well, it seems to me it might be easier for a housewife who may not be too concerned about ounces to say, "Well, this one has 4 cups and this one has  $3\frac{1}{4}$ ."

Mr. DIXON. I have met old southern cooks that say you put a pinch of something in. What is a pinch?

Mr. ROGERS of Florida. Maybe you can tell us.

Nevertheless, you could not tell how many pinches you could get out of an ounce, in any event.

Mr. DIXON. No, you could not.

Mr. ROGERS of Florida. Now if we got into ounces under Federal, say Food and Drug, Mr. Dixon, you have now a provision that it must be stated in the largest measure, so that if you had a 24-ounce package, say, you would have to state it what: 1 pound 8 ounces, presently?

Mr. RANKIN. Or  $1\frac{1}{2}$  pounds; yes, sir.

Mr. ROGERS of Florida. What is going to happen now if we pass this law and you have to repeal your own law?

Mr. RANKIN. The bill requires a statement in ounces.

Mr. ROGERS of Florida. Well, are you repealing that part of your law?

Mr. RANKIN. You are changing it, in my opinion.

Mr. ROGERS of Florida. How are they going to know? There are two provisions of law now?

Mr. RANKIN. No, sir. The first provision, the existing provision that you refer to, Congressman, is in the regulation, and the agency will take care of that administratively; it is not necessary to repeal a section of existing law.

Mr. ROGERS of Florida. So instead of saying a pound and a half for the housewife, you are going to say 24 ounces?

Mr. RANKIN. That is what the bill provides.

Mr. ROGERS of Florida. And that is going to make it clearer to her?

Mr. RANKIN. The theory is that—

Mr. ROGERS of Florida. I am not asking for theory. As a personal thing, do you think that is going to make it clearer to her?

Mr. RANKIN. It would make it easier for me, Mr. Rogers, to calculate from 24 ounces than from a pound and a half, because the first step I have to take if I start with a pound and a half is to convert to 24 ounces in determining the price per ounce that I am paying.

Mr. ROGERS of Florida. Don't you think it still would be clearer to put it in servings for a housewife?

Mr. RANKIN. Well, you see, this bill does both. It provides that the weight shall be stated in ounces and also provides that where this is appropriate the agency has the authority to determine what constitutes a serving. So it goes from both directions.

Mr. ROGERS of Florida. All right. Let me ask you this: Suppose we package pudding, say chocolate pudding, package 4 ounces. Now the yield there may be only four servings, and vanilla pudding, which has a different consistency, or some other pudding in a 4-ounce package, may yield, say, three servings.

Now this would be the 4-ounce package but to the housewife that may be more deceptive than the way it is presently done as long as we put the labeling of servings.

Mr. HOLLOMON. Mr. Rogers, may I reply to part of this question? It would seem to me the question is whether one first specifies ounces or pounds or fractions of the largest whole unit which is a different principle that is involved. It is a matter of judgment of the committee as to which would provide the clearest basis of cost comparison per unit.

I think there can be differences of opinion as to which of these two methods provides the best basis of cost comparison.

In general, the conferences on weights and measures in the States have adopted the principle of the largest whole unit and fractions thereof.

Mr. ROGERS of Florida. That is what I thought. This would not change under the bill.

Mr. HOLLOMON. That is right. I think I can state so long as you have one or the other you would provide a basis of cost comparison but that the judgment of different people may be that one is more easy to use than the other.

I have a personal opinion, I am sure that Mr. Rankin expressed that opinion, but in my view, either one of these systems would operate.

Mr. ROGERS of Florida. Let me ask you this question now. All of you are supporting this bill. This excludes meat, meat products, poultry, poultry products.

Mr. HOLLOMON. Yes.

Mr. ROGERS of Florida. The Department of Agriculture yesterday testified that they need no additional authority, they allow packaging in the half ounces even if it goes over, as long as the net weight is stated on the package.

Now it seems to me if the highest price single product in the housewife's budget can be stated in any quantity as long as it is clearly stated and if we would go ahead and make sure that wherever there is a half ounce stated or some off-figure, that servings have to also be stated clearly on the label, that this should be sufficient safeguard to the housewife to allow her to compare.

Does anyone have any comment on that?

Mr. DIXON. I would make one voluntarily. Meat has to be cut. You can be a darn good butcher but you have a hard time hitting on the nose an ounce.

Mr. ROGERS of Florida. This is the point. Should the Government come in and make them standardized?

Mr. DIXON. If you are filling up a package by the machine you have no trouble controlling that.

Mr. ROGERS of Florida. Except for recipes, cake recipes, one will be of greater weight because of the different consistency because it has raisins or nuts. So there are many problems involved that we have to deal with.

Mr. DIXON. Yes.

Mr. ROGERS of Florida. That is why I was saying that servings should be a better standard.

Mr. DIXON. This bill is a step and it is but a step. There are many problems that these bills do not deal with, but it is a step in this direction.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. Hollomon, in the statement that you read for the Secretary you stated on page 5 that—

nothing in this legislation is intended to curtail innovation.

Of course you know we have had a long list of witnesses before this committee and in many cases the witnesses brought before us their products. Frankly, I was impressed with the innovations in packaging that have been presented to this committee, and generally feel that American industry that provides the products for consumers have

been imaginative and have brought forth products and new packages that have been of benefit to the American consumer.

Would you agree or disagree with this conclusion, generally?

Mr. HOLLOMON. I agree. Innovations in both packaging and products in this field have been very great and to the benefit of the consumer and I don't think anything should be done that would inhibit that to any substantial degree.

Mr. BROXHILL. Now as we listened to many of these witnesses the allegation was made that when regulations are promulgated that a particular company that wanted to bring out a new product and a new package would have a very difficult time to get this approved and would possibly have to bring their new product before the public, you might say, and thus show their hand for the competitor.

What would be your response to this allegation?

Mr. HOLLOMON. I think, first, I would like to separate the question of packaging from product innovation because I think there are different problems, they go to different sections of the bill, 1(5)(c) and 1(5)(d). That is, I think, there are somewhat different problems.

If, as in the House bill, one specifies sizes and shapes of packages, one has to then determine a mechanism whereby new sizes and shapes of packages would be permitted.

The second one has to do with the weights and measures in which products are offered for sale. This goes particularly to the problem of a new product with different density. Let's say that it does not jibe as well as some preceding package.

I would have two comments. One is if a new product is really new and not covered by regulation, its sale could not be affected. One of the things that would have to do under this act is specify the particular commodity and to define exactly the class of products to which the regulations will apply.

Then if it is a radically new product and that definition does not include it, it would not be included under the regulations. So it does not inhibit the development of a new product which lies outside the product definition of the regulation.

The second point I would make is that particularly if this "voluntary" procedure is followed—that is, the practice which is now underway in the Department of Commerce to allow industry to come in and develop a product, that provision specifically says that the standard of weight or measure or whatever standards would be developed through that voluntary proceeding can be promptly amended so as to permit the changes that are required through technological innovation.

Once that amendment has been allowed, then that amendment would preempt the regulations of FDA and FTC if that particular route followed.

The third question arises when regulations are promulgated and are not based on the voluntary standards procedure of the Department. Then, it is my opinion that the regulations should be written so that an innovation, a new product, can have some exemption for some time period.

I think that that is the thrust of the whole bill, that we are trying to do something to be proconsumer. If the introduction of an innova-

tion of product was going to be prevented, then the whole thrust and attitude of this bill, the sense of this bill, would not be followed.

Mr. BROYHILL. Thank you, Mr. Hollomon.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Dr. Rankin, I call your attention to the fact that the other day somebody from the cosmetic industry testified here, and that brings to my mind the operation of this bill.

You take section 5(c) (4), I believe, which requires or could require the information with respect to the composition of any consumer product that is placed on the package. Now I talked about lipstick, I believe it was the witness referred to, and that is that she stated that would mean both cosmetics for their staying quality.

For example, the older person bought more colorful lipstick. She also ran through chemical compound, beeswax and all kinds of waxes and other chemicals that made the base for the lipstick.

Now, what would be the advantage insofar as facilitating price comparison by putting ingredients in compositions on, say lipstick?

Mr. RANKIN. I doubt that there would be an advantage with respect to price comparison in all instances. There could be an advantage with respect to avoiding deception, however. There are ingredients that are used in the cosmetics that cause difficulty in some consumers. They are known to produce allergies. They do not produce allergies to such an extent that——

Mr. KORNEGAY. For the purpose of this question, confine the answer to lipstick. Are there certain base ingredients in lipstick?

Mr. RANKIN. Yes, there are. Oil of bergamot in perfume would be an example of a substance that will produce an allergic response in some individuals, not enough so that we have felt justified in ruling oil of bergamot off the market. If the bill became law and required lipsticks or other cosmetics to declare oil of bergamot when it is present, then the consumer who knows she is allergic to it could avoid wasting her money on that product.

Mr. KORNEGAY. If you approach it from that angle and require the revelation of industry's ingredient, that could be harmful to some particular individual, do you anticipate you could go so far as to require a possible declaration of all the ingredients in lipstick even though there is no suspect?

Mr. RANKIN. I have not anticipated that under this bill.

Mr. KORNEGAY. Now what about perfumes? I am advised there may be as many as a hundred ingredients in a particular perfume.

Mr. RANKIN. That is correct.

Mr. KORNEGAY. Would you require that all of those ingredients be listed on the label?

Mr. RANKIN. No, sir. There is no intent under this bill, if it is enacted, to require all ingredients of perfumes to be listed.

Mr. KORNEGAY. What about rouges and face creams and things of that sort?

Mr. RANKIN. The purpose, as I understand it of this particular section, is to require a listing of ingredients where it will avoid a deception of the consumer. There are circumstances of course, where it would enable price comparisons, too, and under those circumstances

the intent would be to require either a partial or complete listing of ingredients as the case might require.

Mr. KORNEGAY. Now under the present law, do you have authority not only to require the labeling of being harmful ingredients but even to the authority to prevent its use?

Mr. RANKIN. We do not have the authority to require a declaration of harmful ingredients. We have the authority to bar from the market a cosmetic that is a hazard to health.

Mr. KORNEGAY. Or prevent the use of an ingredient in any cosmetic which is harmful to health.

Mr. RANKIN. We do that by barring the finished cosmetic.

Mr. KORNEGAY. The manufacturer has to restructure his product and bring it back to you for approval?

Mr. RANKIN. They do not have to bring it back for approval.

Mr. KORNEGAY. Well, they don't have to but if they want to put it on the market?

Mr. RANKIN. No, sir. There is no requirement that a cosmetic be submitted to the Government for approval before it is marketed, except for cosmetics that are or contain color additives.

Mr. KORNEGAY. Well, once you barred it, that is what I am getting at.

Mr. RANKIN. A different product could be put on the market without advance approval.

Mr. KORNEGAY. You could substitute some harmless ingredient for the harmful ingredient, put it back on the market without getting approval?

Mr. RANKIN. Yes, because that is a different product.

Mr. KORNEGAY. Now, can you think of any cosmetic where information as to ingredients or the composition would actually facilitate price comparisons?

Mr. RANKIN. At the moment, I do not.

Mr. KORNEGAY. You know that there are certain cosmetics, the use of cosmetic compounds, which involve trade secrets, is that not right?

Mr. RANKIN. I understand there are, yes, sir.

Mr. KORNEGAY. Now the bill attempts to exempt trade secrets or manufacturers revealing trade secrets, but suppose a controversy comes up; what is a trade secret?

Mr. RANKIN. I do not regard as a trade secret a substance in a cosmetic that may cause serious allergies in some users.

I have just been reminded, if I may go back to the earlier question, that there are some outstanding examples where the listing of ingredients on the label would facilitate price comparisons.

The examples would be products marketed as so-called tiger's milk without tiger's milk but made with cow's milk; placenta marketed with gelatin instead of actual placenta.

Mr. KORNEGAY. You mean——

Mr. RANKIN. There have been over the years, sir, many, many examples of tremendous promotional campaigns based upon the alleged cosmetic benefits to be obtained from exotic ingredients when in fact the exotic ingredients were in fact not present or were present in infinitesimally small quantities.

Snake oil would be another example.



Mr. KORNEGAY. Mr. Chairman, let me ask just one question.

Mr. DIXON, does this bill cover wearing apparel? I know the question of shirts arose and I believe you said it did not cover shirts.

Mr. DIXON. I remember that question put to me here before and it is conceivable that wearing apparel could be packaged in such a way. I think it would be challengeable under the bill.

Mr. KORNEGAY. Under the definition of consumer products, that was the point that I was making, in which it says, "\* \* \* or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use."

Mr. DIXON. This is the reason upon further reflection I am glad you asked the question because I originally said I doubt it.

Mr. KORNEGAY. I was going to ask you about socks and underwear. I was assuming that if shirts were not covered, then socks and underwear would not be covered.

Mr. DIXON. I think it is possible that they would have to meet the other test of pricing.

Mr. KORNEGAY. Of course, they are subject to other acts.

Mr. DIXON. Yes.

Mr. KORNEGAY. The Textile Fiber Act and all those things.

Mr. DIXON. Yes.

Mr. KORNEGAY. But you think there is a possibility that they would be covered under the terminology of the bill?

Mr. DIXON. I don't know of any ready examples that come to mind or that need to come into this bill in that field but I could conceive that someone, for purposes of their own, might encroach upon what this bill is aimed at.

Mr. KORNEGAY. Thank you very much.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. Mr. Chairman, nice to see Mr. Rankin once again. We have discussed under the rather limited time rule the question of fish protein concentrate.

How will the marketing of fish protein concentrate be affected insofar as this legislation is concerned, if at all?

Mr. RANKIN. If the marketing of fish protein concentrate is approved, Mr. Keith, then its marketing definitely would be affected by this legislation, if enacted.

Mr. KEITH. Excuse me. I don't believe that the marketing of fish protein concentrate is approved at the moment even though it is properly labeled, is it?

Mr. RANKIN. No, sir; not the product that we were discussing the other day; that is, the product made from whole fish.

Mr. KEITH. You mean even if it said not fit for human consumption, it could not be marketed, even though it was properly labeled?

Mr. RANKIN. You are correct. The product can be manufactured and used for animal feed or fertilizer today.

Mr. KEITH. As long as it is properly marked.

Mr. RANKIN. That is correct.

Mr. KEITH. Now it is my understanding that the—

Mr. RANKIN. It is commonly called fishmeal, not fish protein concentrate, when it is marketed for animal feed and fertilizer. Fish pro-

tein concentrate is a term that has come to mean a product that people hope will be approved for human consumption.

Mr. KEITH. I understand. I am intimately acquainted since your appearing.

It is my understanding that it will still be marketable if it is properly labeled as fish protein concentrate, that is, as long as the product content is described on the package.

If people want to eat it knowing that it is made of whole fish, they can do so.

Mr. RANKIN. No, sir; fish protein concentrate, the product that is made from the whole fish is not marketable for human food in this country under any form of labeling. It would be illegal.

Mr. KEITH. It would be illegal.

Mr. RANKIN. Yes, sir.

Mr. KEITH. But for export purposes, as long as it is properly marked, the U.S. Government would have no control?

Mr. RANKIN. Properly marked and so long as it complies with the laws of the country to which it is shipped and the specifications of the foreign purchaser, yes.

Mr. KEITH. Now, it is my understanding that Food and Drug is now satisfied with reference to the filth being washed out with a process that has been developed. Does the problem now rest with the fluoride content?

Mr. RANKIN. This is a matter that we did discuss the other day. It is our feeling that if the fish protein concentrate first can be established as safe, it should be possible to market it in consumer-size packages so that the user of the product is adequately informed as to what he is getting, just like the consumer of oysters or shrimp or lobster knows what he is getting and eating. Under these circumstances that the filth question in the law probably would not have to come into play.

Mr. KEITH. Yes. In other words, my understanding is correct that the process has been approved insofar as the filth aspects are concerned, but we are now worried about the fluoride content.

Mr. RANKIN. It has not been approved but the remaining question, Mr. Keith, is the fluoride question. Assuming that a method can be developed to insure that the fluoride content of the material produced by the Bureau of Commercial Fisheries process is within an acceptable level, either by reducing the total fluoride content or by establishing that the fluorides present are not biologically available, we would anticipate that we can approve the process.

Now I do not know whether it will be necessary to use some new solvent or some new method of manufacture that will introduce another toxic ingredient that we will have to consider. I can't give positive assurance on that point.

Mr. KEITH. How would this legislation which we are considering affect the marking of the package if, say, it was approved but there still had to be a fluoride content revealed?

What would be the operation of the proposed legislation on the marketing of fish protein concentrate assuming that fluoride was the only negative quantity that had to be accounted for on the package?

Mr. RANKIN. I am not sure that I understand the question completely. Let me answer in two steps, if I may.

The impact of the bill before the committee on the marketing of fish protein concentrate, if approved, would be the same impact that it has on other types of food commodities. It would require the placement, for example, of the quantity of contents statement in a prominent location on the principal panel.

It would require the various other provisions that have been discussed here this morning.

Now if there is some safety factor that is involved, it would not come in under this packaging bill, it would come under the food additives amendment which is currently in the law and would be dealt with under that amendment.

MR. KEITH. Is that somewhat parallel to the situation that existed in the case of cosmetics?

MR. RANKIN. No, sir; we do not have a provision in the cosmetics chapter of the law comparable with the food additives provision in the food chapter of the law.

In other words, a new food additive, one that is not generally recognized by appropriate experts as safe, must be tested for safety and the test results submitted to the Food and Drug Administration and the marketing of the product approved by regulation.

In the case of cosmetics there is no requirement in existing law, except as to color additives, that the product be tested for safety or if the manufacturer happens to make tests there is no requirement that he submit them to the Government.

He is privileged to go ahead and market whatever cosmetic he wants to. If it causes trouble or we find that there is something wrong, then after that fact we are privileged to take appropriate action under the law. The cosmetic law is out of date as compared with existing controls in other sections.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Satterfield.

MR. SATTERFIELD. Thank you, Mr. Chairman.

I read with some interest, Mr. Hollomon, the statement that you read on page 2 where it says: "American shoppers are looking to Congress to give them the opportunity to make better buying judgments."

Am I to infer from this that your Department is saying that even in the absence of fraud and deceit it is a proper function of the legislative branch of government to take action that gives shoppers the opportunity to make better buying judgments?

MR. HOLLOWOM. I think that is the major thrust of this bill, Mr. Congressman.

MR. SATTERFIELD. May I ask what you consider to be the source of this?

MR. HOLLOWOM. The constitutional source?

MR. SATTERFIELD. Any source, constitutional or otherwise.

MR. HOLLOWOM. I am not a lawyer at all, sir, but it seems to me that—

MR. DIXON. I think it would be under the general powers to regulate in foreign and interstate commerce under article I. The Congress of the United States shall regulate foreign and interstate commerce and commerce with the Indian tribes.

MR. SATTERFIELD. Do you feel that that regulation should go so far as to get into the innovation, as this bill does, to give you the right

to control certain actions of industry where they do not involve subjective intent on the part of the manufacturer to do something that misleads?

Mr. DIXON. The whole historical development of that constitutional clause leads to that because many still argue that it was a mistake to attempt to outlaw the doctrine of caveat emptor. There are many people that hold to the position that Congress should not meddle around with that, you should just let the consumer learn by bitter experience, but we turned that corner in 1914.

Mr. SATTERFIELD. The intention of this bill then is based on the interstate commerce clause.

Mr. DIXON. Yes, sir.

Mr. SATTERFIELD. Is it not a fact, Mr. Dixon, I think you touched this earlier, that notwithstanding the source of this authority in considering this bill we are departing from precedent and going into an entirely new area in that when we have dealt with fraud and deceit insofar as the packaging and business is concerned that we were dealing with subjective intent, whereas in this bill when we are attempting now to create a standard of not impairing the ability of consumers to compare prices aren't we getting into an area now that does not involve the subjective intent of the manufacturer or the packager to mislead the public, isn't that correct?

Mr. DIXON. No, you have already closed that road again, sir, in 1938. With respect to the Federal Trade Commission in 1938 you passed the amendment to the Federal Trade Commission Act and you added the additional words to the act, "Unfair deceptive acts or practices."

Now we do not have to prove fraud under the Federal Trade Commission Act. In other words, we have no criminal responsibility of enforcement whatsoever, sir.

Now, incidentally, we may do it but it is not necessary to carry that burden. In other words, with the best intentions one can deceive and I think that is what this bill here is addressed to, sir. I would hate to think that the practice of stating quantities of what is in a package in, say, 1 pound 4 ounces was done purposefully to deceive.

Mr. SATTERFIELD. Do you believe that 1 pound 4 ounces does deceive?

Mr. DIXON. I do believe the records I have seen, yes, sir, that the various hearings that lead to this legislation are rather persuasive on that point. I might say that I have had my own experience walking up and down the aisles of shopping centers and stores and I specially get confused when one says 1 pint  $2\frac{3}{4}$  ounces, 1 pint  $6\frac{1}{2}$  ounces. When you get to fractions I really get into a little trouble these days.

Mr. SATTERFIELD. I can recognize that. The point I am getting to really is when you talk about fractions. Fractions really do not confuse people; inability to work fractions is what's confusing.

Mr. DIXON. Ask yourself how many ounces in a liquid quart. Real quick!

Mr. SATTERFIELD. Thirty-two.

Mr. DIXON. How many in a pound?

Mr. SATTERFIELD. Let me ask you a couple of questions.

Let's go to ounces and we are going to say that standards are laid down that you have to put things up in quantities of 16, 24, 32, avoirdupois.

pois ounces. Let's say a product is put up to sell in 16 ounces for \$1.61, 24 ounces for \$2.16 and 32 ounces for \$2.97. Nobody can tell you which is the cheapest, which is the most economical purchase without going through the mental mathematical process of division, and perhaps fractions because we have odd cents here that are not evenly divisible.

Mr. DIXON. I agree. I think you can go so far in helping the consumer but we don't know how far is enough. This bill tries to do something where it is found necessary because ready price comparisons can't be made. What should be the extent? Mind you, I think you are going to have to have a record that would support an extreme because you have provided in this bill that you must have such a record and it must withstand judicial review. So if you did something that I think would perhaps be farfetched, I doubt if it would pass judicial review.

Mr. SATTERFIELD. Not you, sir, but one of the members of this panel made the statement that the object of this bill was to create uniformity insofar as the weight in which products are packaged, that if weights are not standardized then there is a deprivation of the right and the ability to compare and make price comparisons. So on the basis of that it seems to me reasonable that this is exactly where this bill is going to hit. The question that remains is that if we are going to standardize the weight we are still going to come up with fractions. Are we not one step further along the way to saying that eventually you have to sell a product at a price divisible by 5 or 10, because then it would be easier mathematically to compute comparisons in your own mind? Where do we stop?

Mr. DIXON. I think the Congress will stop at the right place.

Mr. SATTERFIELD. I agree. I think this is the right place to stop now. [Laughter.]

Mr. KORNEGAY. Will the gentleman yield?

Mr. SATTERFIELD. Yes.

Mr. KORNEGAY. This question of ounces and fractions of ounces, could we clear that up very simply by going on the metric system and doing away from the old English system? What would be your views of that change?

Mr. DIXON. I think for a while if we changed to the metric system it would be a great deal of confusion but once it was accepted and understood, then I think that you could compare metrically just as we could compare by ounces today.

Mr. KORNEGAY. For a while there would be as you take an ounce you have a tendency to relate, say, a kilo to a pound. Today you have your decimal places and you carry it out and anybody can read the decimals.

Mr. DIXON. It would be real confusing if somebody would come out and start using the metric system alone.

Mr. KORNEGAY. Well, you compare, that is what I am getting at. You have 1 kilo, you carry on with the decimal point.

Mr. DIXON. I would have to carry a table around with me so I would be sure I knew how to convert.

Mr. KORNEGAY. You would not have to convert, that is what I was getting at. You get away from converting.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Hollomon, as I was sitting here before I was wondering why you were so eager to surrender section 5(o) (5) or why you would be willing to surrender that section in the House bill.

As I read it, that section pertains really only to the shapes of packages.

Mr. HOLLOMON. Right.

Mr. HARVEY. As I read this the real thrust of the packaging section of this particular bill is in 5(d) which would permit the establishing of the quantity of a particular item; is that correct?

Mr. HOLLOMON. That is correct, and not the package.

Mr. HARVEY. Not the shape of the package?

Mr. HOLLOMON. Not even the size of the package but the quantity of the product, sir.

Mr. HARVEY. Let's take a pack of corn flakes. You would be able to say it would be 16 ounces or 32 ounces, but not what the size of the package would be?

Mr. HOLLOMON. That is right; or its shape.

Mr. HARVEY. Or its shape.

Mr. HOLLOMON. That is correct.

Mr. HARVEY. That is what you are saying is what you want, but you don't need the size or the shape?

Mr. HOLLOMON. I am trying to say that I think that it is entirely up to the committee, that our position is that we would be satisfied without the section but it is up to the committee if they believe that the sizes and shapes of packages also might be deceptive or misleading in cost comparisons. Our position is the Senate bill without that section will accomplish much of what we believe needs to be accomplished in this field.

Mr. HARVEY. Let's just go on. The Agriculture Act provides that fractions of ounces are permissible on canned meat for example. Apparently this is satisfactory all the way around. Now why is it more necessary to standardize weights in other products. We permit fractions of ounces in canned meat and no one says anything about it.

Mr. HOLLOMON. I spoke to this question earlier. You are now referring to the question of what units would be used with respect to the specification of the quantities in the package. This is section 4(a) (3). As I said earlier, the question of whether or not you should use the largest whole units and fractions thereof which is the practice in question under the condition you raise, and also the practice of many States, or whether you use the ounces and then the whole units, pounds or pints, is a matter of judgment.

I think either would assist and I think it is a matter of judgment as to which would be better, but the option of allowing either should not be permitted.

Mr. HARVEY. All right. Let's look just for one moment at the declaration of policy. We say in the first sentence, and I quote:

Informed consumers are essential to the fair and efficient functioning of a free market economy.

Now if we are talking about price comparison, the ultimate price is set by the market.

Mr. HARVEY. There is no primarily about it. The retailer is the fellow who decides what the customer is going to pay. Where is the primarily? That is fundamental, no one else sets the prices.

Mr. HOLLOWOMON. It depends. I was only hesitating; in the fair trade States that is not the case.

Mr. HARVEY. Nevertheless, I don't know how many of those States there are but in the State that I live in, in Michigan, for example, you walk into a store and the price is stamped right on the particular item and you walk up and down and the grocer is stamping that price just as you go to pick up the item. Now whether he is stamping a fair trade price or another price he is telling that customer what the customer is going to pay to get the item off the shelf.

Mr. HOLLOWOMON. He is so informing the customer.

Mr. HARVEY. Have you or other Government agencies given any consideration to having the retailer tell the customer what price he is paying per ounce? As long as he is going along there and telling him what he is going to pay, why does he not also stamp the item is 29 or 2 cents per ounce? Would that not be a lot simpler than this bill that we are putting out here and all the rigmarole that we have sat through here for 3 or 5 weeks?

Mr. HOLLOWOMON. My own view, and other members of the panel may comment, first, it would put an enormous burden on every retailer and, second, that the policing of such an action would be just extraordinarily difficult.

Mr. HARVEY. Well, I think that this bill is going to put a burden also on the manufacturer and I think it is going to put a burden on a lot of other people, and I think it is a question of how you weigh the burden. But you say you have given consideration to it. I am not suggesting in jest; I am suggesting it seriously.

Mr. HOLLOWOMON. I had not personally given consideration to this, maybe others have. I was giving you an immediate reaction. It seems to me this puts an enormous burden on the retailer and would make enforcement extremely difficult. I have not previously given consideration to that approach to the problem at all.

Mr. HARVEY. I am just throwing this out. The computers they have today and methods of determining these things, would it not be relatively simple to determine what price per ounce you are paying for something? If you want to end confusion as far as the customer is concerned, that would be an ultimate, I think that you are really ending it.

Mr. HOLLOWOMON. I don't think putting this burden on the small or even medium-sized retailer would be appropriate.

Mr. HARVEY. You would rather establish the size of the package?

Mr. HOLLOWOMON. No, sir.

Mr. HARVEY. Or establish the quantity in the package?

Mr. HOLLOWOMON. The latter, sir. Under the conditions that it is necessary to do so to make fair price per unit comparison at the market, always remembering that failure to be able to do that has to be determined in a particular case.

Mr. HARVEY. That is someone's determination; that is what it amounts to.

Mr. NELSEN. Would the gentleman yield?

Mr. HARVEY. Yes.

Mr. NELSEN. In connection with the standardization of weights did I understand you to say that in the instance of corn flakes you suggest it be X number of ounces all in standard weight packages to be sold?

Mr. HOLLOMON. Not necessarily. The question of corn flakes was used as an example and for another purpose. What I would like to say was that if in order to permit price comparison that a determination or finding has to be made. It would then be required that they be sold in certain predetermined units of weights or measures.

Mr. NELSEN. Well, your answer to the question led me to believe that you were going to suggest that standard weights be in similar products.

For example, General Mills found in potato buds the texture was not the one the public wanted to buy so they moved to a lighter texture which put less weight in the same box. In other words, if we are going to have standardization of weights of competitive products, you are going to have a proliferation of package sizes far in excess of what you presently have.

Mr. HOLLOMON. In issuing the regulations, the agency would have to determine the question of what the additional cost would be and whether or not there had been in the past a customary packaging policy with respect to that product. Both of those would have to be weighed in issue to the regulation.

Mr. NELSEN. Thank you.

The CHAIRMAN. Will the panel indulge me?

I would like to recognize our Under Secretary of Health, Education, and Welfare is with us.

Now I would like to make just a short statement before we come to the next question.

There has been some question about this bill and I say that this is the year when Congress is confronted with truth. In these halls there are two bills trying to make the truth known. Here we have one of these truth bills. Both are said to be favored by about 90 percent of the general public. But truth appears to be a dangerous commodity sometimes and we are afraid to pick it up. Nevertheless, we are going to continue working on this bill. I don't intend to let go of it until we have done something about it.

Some people seem to think that the public is always wrong. I can't believe it. We are here to serve the public good and that is the only reason we are here. The public wants a little more truth in a number of situations and I think they are entitled to it. We are going to pursue this bill and we will stay with it until we either vote it up or vote it down.

Next, Mr. O'Brien.

Mr. O'BRIEN. Mr. Chairman, I only have one question and perhaps it has been asked.

How many Federal employees will be required to enforce this law if it is enacted as it is presently before us? Additional?

Mr. HOLLOMON. I would think that we might do is each respond for each of the agencies.

Mr. Dixon.



Mr. DIXON. I have previously said, sir, that I estimated \$250,000 additional money for that portion of the act that the Federal Trade Commission would have to enforce.

Now when we talk about that we are talking in the neighborhood of 25 employees because the salary plus the housekeeping functions that go along with it, average out somewhere roughly there, Congressman.

Mr. O'BRIEN. About 25 employees in Federal Trade?

Mr. DIXON. That is additional.

Mr. O'BRIEN. There would be additional employees at HEW?

Mr. DIXON. They have a much greater burden and I chose to answer because I notice Dr. Rankin, I believe it was, answered once here.

Mr. COHEN. Our estimate is between 150 to 200 people.

Mr. HOLLOMON. In Commerce, and here we find difficulty because we are a part of the voluntary approach to developing the regulations, we have estimated 38 people and \$700,000 per year.

Mr. O'BRIEN. Is that the full count?

Mr. HOLLOMON. That is the full count.

Mr. O'BRIEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Mr. Hollomon, we have a mountain of testimony before the committee as to the additional costs that manufacturers would have to bear under this bill, if it passed. I was particularly interested in one line from the Secretary of Commerce's statement this morning that, "We believe that this legislation will not result in increased costs to the consumer." Then a little later in the same paragraph, he says, "Indeed, the manufacturers may realize benefits which would assist them in fighting their own rising costs."

I wonder if you could elaborate a little on the Department's thinking on that.

Mr. HOLLOMON. In the second statement I think the whole history of standardization of weights and measures in this country would certainly give support for a statement that overall in the long term the selling of products in fewer measures or quantities leads to lesser costs both of distribution and the manufacture over the long term. I don't know of a single quantitative study. It is hard to separate over a long period exactly how much benefit has come from packaging and how much from some other technological improvement but when you consider what has been done, for example, in ice cream sizes over the years, voluntarily in that industry, or in milk sizes and other kinds of fluid products, I think that the evidence shows in general judgment, people who know that business, there is an overall saving to the economy in addition to the saving that is permitted by easier cost comparisons.

I think that is the thrust of the Secretary's position.

Mr. YOUNGER. Would the gentleman yield for a question there?

Mr. JARMAN. Yes.

Mr. YOUNGER. Did you hear the testimony, I believe it was Kellogg, where they had the plants in Mexico and one in South Africa?

Mr. HOLLOMON. Yes, sir.

Mr. YOUNGER. South Africa has standardization and Mexico does not, and the cost of operation in South Africa I think was around 30 percent more. Did you hear that testimony?

**Mr. HOLLOMON.** I have read it subsequent to the fact; yes, sir.

**Mr. YOUNGER.** You don't believe it?

**Mr. HOLLOMON.** I just think it is extremely difficult in two different economies with different labor costs and different conditions of manufacture, work rules, restrictions on materials, and so forth. without going into complete detail, I could only say that that is a very difficult comparison to make.

**Mr. YOUNGER.** You doubt the testimony?

**Mr. HOLLOMON.** I hesitate to doubt it, I am just not competent to comment, really, on whether these differences in costs—

**Mr. YOUNGER.** Just a minute, Mr. Hollomon. If you are not competent to testify as to whether or not a manufacturer is correct and he has the experience in both places, then how are you competent to tell this committee that there will be no increase in the cost of manufacturing?

**Mr. HOLLOMON.** At least in the reading of the testimony I don't believe that the detailed elements of the costs were presented. What I am trying to say is without all the details of the differences in selling in two different kinds of markets and two different kinds of countries—

**Mr. YOUNGER.** It has nothing to do with the selling, this is purely the manufacturing.

**Mr. HOLLOMON.** Right. Differences in manufacturing conditions in the two countries, I would hesitate to say whether these figures really represent only the differences due to the standardization of the packaging.

**Mr. YOUNGER.** That is all, Mr. Chairman.

**The CHAIRMAN.** Mr. Mackay?

**Mr. MACKAY.** Thank you, Mr. Chairman.

I would like to say to the panel that when you kicked this hearing off some weeks ago I agreed then and I agree now with the objectives of this legislation and I hope that we can write a bill which can be passed. The objective of enabling the consumer to obtain accurate information as to the quantity of package contents to facilitate price comparison is a worthy objective. I think however we have been in a semantic jungle, one of the worst I have ever been in. The bill itself is poorly labeled.

There has been a colossal failure to communicate what the idea is that the proponents have. They have failed to support it with examples of specific confusion in the marketplace other than the few examples Mrs. Peterson gave. I am sorry she could not be back here so we could cross-examine her because she is considered to be the chief proponent of the bill.

Now of course the word "truth" does not appear in the bill anywhere and I doubt that Congress could agree on a definition of truth. The word "fair" appears and even that word would be hard to define.

It seems to me that this purports to be an accurate labeling and price comparison bill. This is the intent of it. It is not a bill to deal with deception. We are not saying that the man who puts up 1 pound 6 ounces is deceiving anybody but that the end result may be confusion in the mind of the purchaser. I am reminded of the type of package that sometimes is given to you as a gag. It does not have any label

on it and you wonder what is in it. Industry comes in here and says it has a time bomb in it. The Government comes in and says if you keep unwrapping it and unwrapping it you really end up with a pretty small package of peanuts and that it is really not going to do anything to anybody and everybody ought to quit being frightened. There is no meeting of minds as to what is in this legislative package.

The explicit provisions in the bill are in sections 3 and 4. These have been wholly ignored by all of the witnesses who have come before us, yet this is the only part of the bill that says that something definite has got to happen as a result of the enactment of this bill. The proponents of the bill have not made it quite clear what is added to the existing label requirements.

I plead with this panel to take into account the confusion that the original draft of this bill has created, and to offer a new draft which contains more law and less delegation of power.

I would like to ask if there are any other drafts of this bill?

MR. HOLLOMON. Mr. Mackay, I have two comments. I think your statement with respect to the sizes and shapes and price comparisons and definite labeling is an appropriate and proper statement of the intent of the bill. I don't think the intent is to deal with deception of one manufacturer. I don't think truth is involved, in the sense that some one is accusing someone of falsehood, but on the other hand, as you say, truth is difficult to define. What the intent of the bill is I think you have clearly stated.

Secondly, I don't know whether anyone has tried to redraft the bill but certainly we stand ready to work with the committee in any way that we can to carry out the intent of the bill and to carry it forward in the way it would be effective for the consumer and help the consumer make more intelligent purchases.

MR. MACKAY. Are there any other studies to support this bill other than the Michigan study and California study? These are the only studies cited.

MR. HOLLOMON. Mr. Swankin might answer.

MR. SWANKIN. I don't know of any other studies.

MR. MACKAY. It seems to me you don't legislate on the basis of such inadequate investigation. The packaging provisions are not voluntary.

MR. HOLLOMON. That is correct.

MR. MACKAY. Is there a halfway house? Can we provide for discussions with the industry and achieve better standardization without the delegation of so much power?

MR. HOLLOMON. Mr. Mackay, concerning the voluntary part it is also true that if the industry, whether a finding is made or not, proceeds in such a way as to provide the fair comparisons then their voluntary determination would preempt any regulation—that is to say, they could not be any different from the voluntary determinations.

MR. MACKAY. No further questions.

THE CHAIRMAN. Mr. Adams.

MR. ADAMS. Thank you, Mr. Chairman.

I have really broken what I would like to do into two parts. Perhaps some of your staff can help you with the technical details. The first has to do with a definition of drugs and the second with the

technical positions regarding these drugs. Perhaps you can submit this to us by Monday afternoon or Tuesday morning of next week.

First on section 10(a)(3), the definition of drugs. It has been proposed that section 10(a)(3) be amended because the drafting of this may or may not be important.

\* \* \* in the diagnosis, cure, mitigation, treatment or prevention of disease in any man or other animal and is subject to provisions of section 502, 506(b)(1), 506, 508, or 507 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 352, 353(b)(1), 355, 356 and 357.

I think it is an improvement. I would like to know the position of the Department before we propose it as an amendment.

Second, what is your position on the "all-ounce" section which is set forth under 4(a)(3)(A)? The model code uses pounds plus ounces. This would require it all to be in ounces. I would like to know what the position of the Department is as to whether we should go ahead with the provision just as it is because previous testimony has stated that this will require a labeling of all ounces once you go above a pound. Whereas, the model act, the meat act, and the poultry act all provide for stating the weight in pounds plus a number of ounces.

Mr. HOLLOMON. The largest whole unit.

Mr. ADAMS. Yes, plus fractions above.

Mr. HOLLOMON. I have perhaps not fully answered.

Mr. ADAMS. You answered but I could not get it.

Mr. HOLLOMON. What I stated was there are two choices; this bill as it is now written and the system used by the States.

Mr. ADAMS. Well, which do you want?

Mr. HOLLOMON. What I said was that different people have different opinions and that either one would be an improvement. My own personal view is that the largest whole unit system—this is a personal statement now—is preferable.

Mr. ADAMS. We would like to have some statement. I had the same feeling you do. I don't really have a preference or care whether it is all ounces or the other, but I think we ought to know.

Mr. HOLLOMON. We will give you such a statement.

Mr. ADAMS. Thank you.

Now the third—

Mr. ROGERS of Florida. Would you do the same and ask Food and Drug to do the same?

Mr. ADAMS. I certainly do. We just want to come out one hole or the other and have some agreement on it.

Mr. HOLLOMON. We will come out with that.

Mr. ADAMS. All right.

The third section is this: There has been a number of statements and I characterize this bill up through section 5(A) as basically a labeling bill. In other words, all the mandatory sections are in terms of labeling and in terms of standardization of weights and measures and it has been criticized to that point.

The second portion of the bill is really a regulatory portion with a whole series of possible things that can be done after hearings, judicial review, and so on. Now the argument is going to be, and I think it is well stated in Secretary O'Connor's statement on page 4, when he points out that the fear is whether or not the promulgating agencies

are going to be completely unreasonable or not; now to me that is an argument like how many angles on the head of a pin. You can't answer it and argument about it is not helpful.

I would like to know whether or not the Departments have considered and what their position is on having some section of this bill with regard to innovations. Now if you can assume that an Administrator is going to be reasonable, and that may be the position that the panel wishes to take, just that this can be handled by regulations and that they will allow innovations once either a voluntary standard is set under 5(e) or a mandatory standard under 5(f), either through a labeling provision of saying this is not within the standardized categories or saying that any product will have 6 months, a year, 15 months, or some period of time, to go on the market before a determination is made of whether there should be a standard in that area.

I have asked industry people on that and they have talked a lot about it but we have not received any specific language as to how this can be handled. I would like to know whether (1) you think there ought to be something in the statute or (2) whether you think this can just simply be handled because you will have a reasonable administrator.

Mr. HOLLOMON. Mr. Adams, I have been admonished that we are not writing the bill but we believe that the matter is taken care of under the fair proceedings and we have stated that there must be an arrangement in the regulations or in the voluntary proceeding to take care of innovation.

Now if you are asking, "Would we be prepared?" I think you will agree there is nothing stated in the bill, you have to rely on the judicial review and rely on the judicial reasonableness of the administrator and the hearing procedure.

If you feel, or the committee feels this is not explicit enough, we are prepared to suggest a possible handling of the matter.

Mr. ADAMS. I just really want to know what your position on it is. Now I may agree with you that I think that you can't assume that the administrator is going to be absolutely unreasonable.

However, if that is the position that you want to stand on in this, fine. But if you feel that there is language that can be drafted like what do you do on your voluntary standards, for example, when they are once established—say you have these quantities and somebody comes in and says, "We are going to have a squeeze tube."

Now they just come out with a squeeze tube and after so many months if there is some complaint about this you get the industry and you say, "Should we have a standard on squeeze tubes?"

Mr. HOLLOMON. Mr. Adams, if you are suggesting that the bill is not explicit enough on this and asking us a possibility of handling that problem, we would be glad to do so.

Mr. ADAMS. I would like you to do that if you can.

Mr. HOLLOMON. We will.

Mr. ADAMS. I have no further questions except to thank the members of the panel.

Mr. KORNEGAY. Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

**Mr. KORNEGAY.** Mr. Rankin was questioned on the problem of snake oil and my time ran out but as I recall, snake oil used to be good for rheumatism and that was one of the old home remedies for——

**Mr. RANKIN.** So-called snake oil has been offered for rheumatism and many other things.

**Mr. KORNEGAY.** Sunburn and athletes feet.

**Mr. RANKIN.** Almost all the ills that afflict mankind.

**Mr. KORNEGAY.** You are not saying this bill is going to outlaw the use of snake oil or the selling of it?

**Mr. RANKIN.** I am saying if a cosmetic is offered to the women, or now the men, of this country, as having value because of its snake oil content and all it has is cottonseed oil, we would require the label to declare cottonseed oil.

**Mr. KORNEGAY.** What about asafetida? You know that certain sections of the country rely pretty heavy on asafetida around the neck.

**Mr. RANKIN.** You don't need a label declaration to know what you have got there.

**Mr. KORNEGAY.** Somebody said that not only kept the colds and rheumatism away but keeps your friends away.

**Mr. RANKIN.** Yes, sir.

**Mr. KORNEGAY.** Mr. Chairman, you mentioned another bill called truth in spending. A friend of mine sent me a little editorial which I would like to mention here, Mr. Chairman. He is talking about a political truth in packages. He says:

There ought to be a law really that would require candidates to public office to use a recent photograph of himself in all the campaign literature. There have been reports that once or twice in the past candidates have used photographs of much earlier years and when they were still on the sunny side of the hill.

Then he goes on to say that, "If this idea of truth in everything catches on, what is going to happen?" He is concerned, he said, that if women were made to abandon all their cosmetics and appearance mouldings, a lot of the spark might go out of romance.

Thank you, Mr. Chairman.

**Mr. DINGELL.** What about editorial pages?

**Mr. NELSEN.** Mr. Chairman.

**The CHAIRMAN.** Mr. Nelsen.

**Mr. NELSEN.** Mr. Chairman, will we have an opportunity to ask more questions? We will not?

**The CHAIRMAN.** No.

**Mr. NELSEN.** I would say that we should have that opportunity, Mr. Chairman. There are other members that are not here today and I don't think we should cut it off just to 5 minutes.

Now I would like to make an observation, however. I was informed yesterday that the processors of potato products have had an industry-wide conference and have agreed on certain standards that they will set up where there will be a standard weight per serving and the package will be marked in a uniform way on an almost national basis.

Now this has been done, I think this bill has prodded that activity. However, I would like to point out that in the Federal Trade Act you have what is known as the Division of Trade Practice Conferences and Guides.

Now has the Federal Trade Commission attempted by conference with the industry to promulgate uniform plans which they have done on their own? I am just wondering what the record shows as far as the stimulation of standardization by machinery in the present Federal Trade Act available now to the proponents of this bill who claim there is such proliferation?

Mr. DIXON. We have but I don't know of anything in the food line. I am reminded of certain standards for the jewelry industry, that if cooperation with the industry were adopted and there were promulgated what is known as the trade practice rules, and we have them violated by individuals, we challenged them for engaging in deceptive practices, but we have to prove the charge.

Now I think that you have a very valuable lesson from this legislation, or this intended legislation. In fact, everyone has got all the fears of what Food and Drug or Federal Trade will have to do. I have great faith in the American business community that, with the passage of such legislation, the problems will kind of disappear in the air. I think industry will voluntarily adopt many things that you will not have to have this type of hearings on. I am certainly optimistic on that point.

Mr. NELSEN. I would also like to have some information as to the incidents that Mr. Rankin mentioned where it is almost impossible to read the type, the complaints that have been forwarded through your agency and what has been done about it, and the action that has been taken.

I have a feeling that the authority granted presently under the law on labeling and deceptive practices has not been used to the degree that it should have been, and if it has not been used why has it not been used?

If you have been inadequately staffed or if you have had inadequate funds, does the record show that you have asked for it and has the Budget Bureau approved it?

These are questions I think we need to ask and ought to be answered.

Now, Mr. Chairman, I presume a point of order can be made.

The CHAIRMAN. This committee will be adjourning right now because we have completed hearings on this bill.

Mr. DINGELL. Just before we adjourn, Mr. Chairman, I do have a question. No one made a point of order. I would like to discuss this very briefly if I could with Mr. Dixon.

The CHAIRMAN. Go ahead.

Mr. DINGELL. That deals with standardization of package size and weights and those things which would be subject to standardization.

Now, we had discussions of certain types of commodities; that is, let us say, dry cereals. Obviously, standardization would have certain effects in this area; soaps would have the same effect. For example, in cereals you would have puffed rice, which is one weight and one size package for a particular weight, and grapenuts or raisin bran, which are a good deal more dense. You would have two different kinds of soaps, let us say, which you would have to drop in the machine, and you would have several kinds of powdered soaps which you might drop in which might require, in order to get appropriate cleansing, a different amount of soap, perhaps a half cup, perhaps a whole cup.

You might have a liquid soap, which might again require a different amount.

Then you could go over into the area of packaged cake mixes and obviously these would have different densities also, and you would have values that would be very different because you would have, let us say, perhaps an angel food cake mix, a cake mix which was for, let us say, a pound cake, for chocolate cake and then you might have a fruit cake package mix, which again could have a very different density and would be very different.

Now in these instances you would obviously have different values, and you would obviously have very different commodities when you would finish with the product, if you were to work it out.

Now, what would be the actions that would take place in terms of standardizing?

Let us take, first of all, packaged cake mixes or packaged puddings. You would obviously standardize the sizes. Let us say a particular pudding might require an ounce and three-quarters or two ounces. You come up with, let us say, four one-cup servings. Now, what would standardization be in this instance? What would it be with regard to packaged cakes?

Mr. HOLLOMON. I would like to answer first and then yield to the other gentleman.

First off, I think the most important thing is that there be a finding as a result of the different package weights in which the product is sold, that easy cost comparison is not possible. That is the first determination.

Mr. DINGELL. You are not going to say that you would like two different packaged puddings, one or the other, if they were quite different in composition and if they were to require different initial amounts to come up with four cups, for example.

Mr. HOLLOMON. Mr. Dingell, I think one of the things which any standard has to define is what commodity you are talking about.

Mr. DINGELL. These are obviously different commodities.

Mr. HOLLOMON. Now, if they are definitely different commodities they are not comparable in their performance. You have to draw a line.

Mr. DINGELL. This is a question for reasonable judgment.

Mr. HOLLOMON. Reasonable judgment but in any standard procedure one has to first define what is comparable. Then you proceed to determine the weights and measures. I think one has to make that basic judgment before one can proceed.

Mr. DINGELL. All right. Now, let us go into the question of cake mixes. Obviously, the same situation would apply, would it not?

Mr. HOLLOMON. Yes.

Mr. DINGELL. Now when you get into the question of soaps—my good friend here, Mr. Kornegay, asks me to yield.

Mr. KORNEGAY. If you don't mind, I have one thing.

With cake soap—I am not selling anybody's soap. Now come to my mind, Ivory soap, it floats, they advertise. You know it is much lighter, say, than Palmolive, it sinks. Well, I don't know whether you get more washes out of one cake than you do another of the same size, but every cake of soap says 4-ounce size and 8-ounce size.



Mr. DINGELL. You would not standardize Palmolive and Ivory and Dial, and some other.

Mr. HOLLOMON. You have a different substandard for different products which are among themselves comparable. Now you have to have judgment as to what is comparable.

Mr. DINGELL. All right.

Now obviously a can of cherries would be comparable in general language to another can of cherries; am I correct?

Mr. HOLLOMON. Correct.

Mr. DINGELL. But grapenut flakes would not be comparable, let us say, to grapenuts or puffed rice; am I correct?

Mr. HOLLOMON. Not necessarily; that is correct.

Mr. DINGELL. Not necessarily.

Mr. HOLLOMON. Right.

Mr. DINGELL. We could come, perhaps, to canned beans, where a can of beans would be a can of beans unless it happened to have "baked" on it; then we come upon a different can.

Mr. HOLLOMON. That is right.

Mr. DINGELL. Obviously, you would not be standardizing chili with meat and chili without meat, or chili with beans or chili without beans; am I correct?

Mr. HOLLOMON. That is correct.

Mr. DINGELL. Now let's get to powdered soaps. For example, if you were to throw the cake soap into the machine. Are you going to have that the same standard as you would have a soap you would put a cupful or two cupfuls in?

Mr. HOLLOMON. I go back to the cake and there is a reason. If the products are vastly different in their performance or density, then it seems to me one has to have different classes of products in the same standard and this is determined by the judgment of people that would have to promulgate regulations, but in general one sets standards for comparable products.

Mr. DINGELL. Standard ounces of sugar or pounds of coffee?

Mr. HOLLOMON. Yes.

Mr. DINGELL. I believe the term might be standardization; is that correct?

Mr. HOLLOMON. That is the kind of product you are now talking about.

Mr. DINGELL. Yes.

Mr. HOLLOMON. Yes.

Mr. DINGELL. Cornmeal would be subject, perhaps, to standardization.

Mr. HOLLOMON. Yes.

Mr. DINGELL. Let's say white flour would be subject to standardization.

Mr. HOLLOMON. Yes.

Mr. DINGELL. Dried potato mixes might or might not be. Would the same be true with, say, powdered milk? This might be the thing that is subject to standardization. Am I correct?

Mr. HOLLOMON. It seems to me that all are subject to standardization but they would not be subject to the same standardization.

Mr. DINGELL. With regard to crackers; now obviously, a soda cracker might very well be different, let's say, from a cheese cracker or a graham cracker or something of that kind, is that correct?

Mr. HOLLOMON. It may be. Judgment has to rule again.

Mr. DINGELL. Would specific gravity play a part there, as well as the question of its particular composition or additives you mix that are of this kind?

Mr. HOLLOMON. I would think that one has to judge as to whether or not the products are really comparable because what the intent of this bill is is to permit easy price comparisons between comparable products.

Mr. DINGELL. Would you give us some comment as to, perhaps, the sections of the bill which deal with the question of comparability between products?

Mr. ROGERS of Florida. I am concerned about the antitrust implications of this legislation. Particularly Mr. Rankin, I believe, the Federal Trade and Department of Justice have done that by reason of standardization programs that might be similar, but what I would like to do is get your reasoning or your feeling as to what, if any, implications because of standardization would come about in connection with the antitrust laws if you could furnish that.

Mr. DIXON. I can state it right now, I see no difficulty here.

Mr. ROGERS of Florida. The Attorney General stated there would be.

Mr. DIXON. Oh, the Attorney General and anyone can state that if you have standards and you have arrived at a standard, and then as part of that, if you get in the back room and say: "Now we have four standards, let's agree to sell it at the same price," that is where you get in trouble.

Mr. ROGERS of Florida. Voluntary standards.

Mr. DIXON. I am talking about price now, sir. It is not going to hurt anybody to have standards, because we have standards running through our economy and have had it for years and we have had cases where, after voluntary standards were evolved, that industries met and agreed at the price they would sell those products.

Now that is what is illegal.

Mr. ROGERS of Florida. Well, if you could comment on the Deputy Attorney General's statement to the Senate it would be helpful. Where standardization could in some instances be an anticompetitive factor. I think we need some comments on that.

Mr. DIXON. All right.

Mr. ROGERS of Florida. Thank you.

The CHAIRMAN. I would like to thank the whole panel: Mr. Hollomon, Mr. Dixon, Mr. Rankin, and Mr. Swankin for coming. I think your testimony has been very informative. I think there have been a lot of questions answered this morning that were troubling the committee to a great extent.

If everybody will take the time, and I hope everybody will, to read the record I think that it will answer a lot of questions and it will be a lot of help to us in marking up this bill. In my opinion this is a very important bill.

I think it is next in importance to the safety bill that we have considered this year, and we have spent more time on it than any other bill that I know of that has ever come before this committee. We set a record on the safety bill but we have been actually 6 weeks in hearings, 18 days, and lots of times into the afternoon. We have heard more

witnesses, I expect, than we have ever heard on any other bill. Witnesses have come from all over America, from every section and from every industry that was interested in any way and they have commented on this legislation.

Whatever we do here affects every American in some way. I am sure the committee will come up with a good bill. I am sure of that. I am sure that it is not going to be a punitive bill which would be against the manufacturers in any way.

Mr. DIXON. Mr. Chairman, Dr. Hollomon expressed it but, as usual, you know that any technical help or any clarification that we can make or be of any assistance to the committee we stand ready subject to call.

The CHAIRMAN. We will call on you if there is any question, because I didn't make it as an idle statement when I said that I think 90 percent of the people in this land are for the bill. I used the word "truth" and perhaps I should not have used it because it seems to irritate a lot of people. Actually it deals with packaging and labeling.

Most of industry is fair, most of industry tries to always adhere to a code of fair conduct. They are the ones that built this land. But there are always a few in any segment of society who act otherwise. We are trying, by this bill, to bring them into line.

Mr. Cohen.

Mr. COHEN. Yes. Mr. Chairman, I want to say that we wholeheartedly concur in the very vital importance of this legislation and in Secretary Connor's statement and underscoring what both Mr. Hollomon and Mr. Dixon have said in Department of Health, Education, and Welfare, they would be glad to cooperate in any technical way to help get this bill through. We think it is of major importance.

I think we are unanimous and agreed upon our point of view. We have done all our homework and our technical work and I think we all stand ready with you and the committee in working out a good bill.

The CHAIRMAN. I thank you, again, for appearing this morning.

This will end the public hearings on this bill. Our next step will be a markup of the bill and we proceed with that next week.

The committee is adjourned.

(The following letter was received from the Department of Commerce in reply to questions propounded by members:)

THE ASSISTANT SECRETARY OF COMMERCE,  
Washington, D.C. September 10, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to several questions raised by members of your Committee during the hearings on September 8, 1966, on H.R. 15440 and S. 985, the fair packaging and labeling legislation.

1. In response to Mr. Dingell's precise question, there is no express provision in H.R. 15440 or S. 985 requiring that the definition of a consumer commodity subject to a weight or quantity regulation be limited to reasonably comparable commodities.

However, we believe it is clear, as was stated at the hearing, that any regulation on weights or quantities would be restricted to comparable commodities, and this is the intent of the legislation. We have no objection if the Committee deems it desirable to add to H.R. 15440 a section which would require that a weight or quantity regulation be limited to reasonably comparable commodities.

2. Mr. Adams asked whether there would be any objection to adding a section to the bill which would expressly provide for innovation. We think the present language of the bill impliedly covers this, but, again, we have no objection to an additional provision which would enable the promulgating authority to permit deviation from an established standard for a limited period of time in order to permit test marketing for an innovation requiring a weight or quantity different from the establish regulation. We believe the voluntary proceeding has provision for covering such circumstances.

3. Mr. Adams also inquired as to our position on changing the language of section 4(a) (3) (A) to provide for labeling of commodities in terms of the model state code. This would require the weight or quantity to be expressed in terms of the largest whole unit of weight or measure and, when fractions result, the fraction may be expressed in the next smaller whole unit. For example, 1¼ pounds could be expressed as 1 pound 4 ounces. Section 4(a) (3) (A) as presently written would require that the example as given above be expressed as 20 ounces.

This section of H.R. 15440 and S. 985 may need further consideration as to its effect on existing Federal or State law; and we would be happy to work with the Committee on the technical problems involved.

4. The effect of the amendment to section 10(a) (3) about which Mr. Adams also inquired would be to exempt essentially all drugs from the labeling and packaging provision of this bill. As this section is now written it exempts prescription drugs (including prescription antibiotics) and Insulin.

Drugs are divided into two classes, those which can be sold directly to the purchaser for self-medication and those which must be dispensed only on prescription. The packaging and labeling of drugs which a person may buy for treating himself is required to carry a message under which the drugs can be safely and effectively used. The package is the salesman—as is true for super-market food items. The type of labeling, packaging and weight or quantity problems at which this bill is directed occur in the promotion of over-the-counter drugs. We think it would be wrong to exempt such drugs from this legislation and we, therefore, would not favor the amendment.

The views expressed above are jointly held by the Department of Commerce, Department of Health, Education, and Welfare, the Special Assistant to the President on Consumer Interests, and the Federal Trade Commission.

Very truly yours,

J. HERBERT HOLLOMON,  
*Assistant Secretary of Commerce.*

(The following letter and resolutions were submitted by Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs:)

EXECUTIVE OFFICE OF THE PRESIDENT.  
PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS,  
*Washington, D.C., September 9, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The consumers across the Nation have registered their support of the Fair Packaging and Labeling legislation. The thousands of letters which I have received from consumers since the beginning of the President's Committee on Consumer Interests bear testimony to the widespread need for this legislation now pending business before your Committee.

In addition to letters from individuals, I have received from a number of organizations both national and local, their resolutions supporting the Fair Packaging and Labeling legislation. I am enclosing these resolutions indicating the strong support of the many consumer organizations, many of whom did not have an opportunity to register their statements before your Committee. Since I made reference to these resolutions in my statement. I think it would be helpful to your Committee to have in the hearings record the resolutions as passed by these organizations urging the Fair Packaging and Labeling legislation on behalf of the consumer.

Sincerely,

ESTHER PETERSON,  
Mrs. Esther Peterson,  
*Special Assistant to the President for Consumer Affairs.*

## VOLUNTARY ORGANIZATIONS WITH RESOLUTIONS SUPPORTING FAIR PACKAGING AND LABELING LEGISLATION

AFL-CIO.  
 AFL-CIO National Auxiliaries.  
 American Veterans Committee.  
 B'nai B'rith Women.  
 Cooperative League of the U.S.A.  
 Louisiana AFL-CIO.  
 National Association for the Advancement of Colored People.  
 National Association of Retired Teachers.  
 National Conference on Weights and Measures.  
 National Council of Senior Citizens.  
 National Grange.  
 National Rural Electric Cooperative Association.  
 Pennsylvania State Council International Association of Machinists.  
 Supreme Ladies' Auxiliary (Knights of St. John).  
 UAW International Women's Auxiliaries.

## RESOLUTION ON CONSUMER PROTECTION BY AFL-CIO

## RESOLUTION No. 185. CONSUMER PROTECTION

(This covers Resolution No. 77 (Book 1, P. 79))

The AFL-CIO takes a broad interest in consumer interest programs in behalf of its 13 million union members and their families who comprise a significant portion of the buying public.

Through consumer counseling services it seeks to educate; through support of the co-operative movement, it seeks to bring direct economies to consumers, and through legislation it seeks general reforms in the market place to promote the safety of consumer products, to make sure that products are honestly and adequately labeled and that they are available at reasonable prices. And the AFL-CIO has supported full representation of the consumer in the highest councils of government.

Much legislation enacted in the past session of the 89th Congress has been indirectly beneficial to consumers, but little has been accomplished in the way of specific consumer-interest statutes. Much useful material has been opened up through new Congressional investigations which may eventually produce additional reform.

But most of the current consumer legislative agenda has been on the boards for years. Legislation to require disclosure of true interest rates on consumer installment credit was first introduced in 1960. And legislative proposals to cure the chaos in consumer product packaging date from 1962.

The wage-earning family can ill-afford the waste of hard-earned dollars on products in the market place that do not give full value for the money paid out, are unsafe to use, are deceptively presented, or are exorbitantly priced. The consumer's right to safety, the consumer's right to be informed, the consumer's right to choose among a variety of products at fair prices, and the consumer's right to be heard remain as goals in the Great Society. Therefore, be it

*Resolved*, That this Convention reaffirms the commitment of the AFL-CIO to the interest of the consumer, both for its own membership and for the public at large.

We extend continuing support and fraternal friendship to the co-operative movement of this country, which has performed highly useful services to working families, especially through credit unions, housing co-operatives and medical care co-operatives.

We pledge our resources and support to the cause of consumer education, especially through AFL-CIO consumer education programs and through special programs geared into the war on poverty. We commend the Special Assistant to the President for Consumer Affairs for leadership in this area.

We ask for prompt Congressional action to enact a "truth-in-lending" bill, which will require lenders to make a full disclosure of financing charges on

consumer credit, both in terms of dollars and cents and in terms of true percentage annual rates.

We urge prompt enactment of a "truth-in-packaging" bill to stop deceptive labeling and packaging of consumer products and to establish ground rules for reasonable standards for weights and measures in consumer products.

We urge the Congress to act on proposals to close the loopholes in the Federal Food, Drug and Cosmetics Act, especially by requiring cosmetics to be pre-tested for safety before release to the consumer market and by requiring medical devices to be tested for safety and usefulness before sale. We oppose legislative proposals to erode the protections afforded by the Food and Drug Act, sponsored by special-interest groups, such as the "candy bill" offered by confectionary and vending machine interests, which would cheapen candy and increase hazards to children from swallowing inedible substances.

We ask that legislation be enacted to require federal inspection of all meat for safety and wholesomeness, whether or not the meat moves in interstate commerce.

We urge the establishment of federal safety standards and a grading system for automobile tires.

We ask that the Federal Trade Commission be given increased authority to move quickly against misleading advertising. Under present conditions such advertising is frequently allowed to continue for years after complaint is made.

We ask that the machinery for consumer representation in government be strengthened.

We urge that the Congress conduct a study of "trading stamps," widely used as a promotional service in grocery stores, filling stations and drug stores, to ascertain their actual worth to the consumer and their impact upon consumer prices.

The issue of excessive prices for prescription drugs deserves revived attention from the Congress and we urge that investigations be reopened.

We again express opposition to enactment of any federal resale price maintenance legislation, under whatever label it may be offered, whether "fair trade," "quality stabilization" or other misleading title. Such legislation, by allowing private manufacturers to fix wholesale and retail prices on branded merchandise can only result in increased costs to consumers.

#### **RESOLUTION ON TRUTH-IN-PACKAGING LEGISLATION BY THE AFL-CIO NATIONAL AUXILIARIES PASSED AT THE NATIONAL CONVENTION, DECEMBER 9-14, 1965**

We call for repeal of Section 14(b) and we urge our members and our friends to write their Senators, asking them to vote for repeal.

We call for an increase in the federal minimum wage and for extension of coverage of the Fair Labor Standards Act to protect millions of American workers and their families against poverty.

We call for congressional action to set minimum federal standards for unemployment compensation with extension of eligibility to protect all working people and their families when the breadwinner loses his job.

We call for more protection for consumers through legislation, administrative action, and consumer education. Therefore, we support Senator Hart's truth-in-packaging legislation to make it easier for us as women and housewives to determine for ourselves which products are the best buys. We support Senator Douglas' truth-in-lending bill. We support the consumer protection work of Esther Peterson, the President's consumer adviser. We urge our members, our friends and neighbors to support this legislation to promote consumer education so that the family budget dollar will buy more.

We support the AFL-CIO civil rights program and we rededicate ourselves to recognize the rights of all wives, mothers, sisters and daughters of all union members, without regard to race, creed, color or national origin. To achieve this purpose, the AFL-CIO National Auxiliaries shall establish appropriate internal machinery.

We believe the federal government should establish satisfactory working conditions and modern labor-management techniques, with wages and working conditions at least comparable to wages and working conditions which prevail in progressive private employment for people of like skills, training and education. We endorse the policies of the AFL-CIO to achieve these goals.

We oppose the Dirksen "rotten borough" amendment aimed at undermining the basic democratic principle of "one man-one vote," and we support efforts to achieve the "one man-one vote" standard in state legislatures.

We urge continuing action by federal, state and local governments to promote conservation of natural resources, control over air and water pollution, and beautification of our country.

We support the boycott of books being produced by scabs and strikebreakers at the union-busting Kingsport Press and we call on all AFL-CIO National Auxiliaries members to write their local school boards and object to use of public funds to purchase school textbooks and encyclopedia produced by the anti-union Kingsport Press, of Kingsport, Tennessee.

We urge officers and members of AFL-CIO National Auxiliaries locals to support and encourage people within the labor movement and their families to take advantage of newly enacted education legislation, including higher education, vocational education, and adult education programs which include instruction in parliamentary procedures. We also recommend that leadership training programs be offered in state and local areas to help affiliates increase their knowledge and understanding of the aims and ideas of the AFL-CIO National Auxiliaries.

---

**RESOLUTION ON FAIR LABELING AND PACKAGING BILL BY THE AMERICAN VETERANS COMMITTEE PASSED AT A SPECIAL CONVENTION, FEBRUARY 13, 1966**

Whereas, Public hearings conducted by Senator Hart and others during the past years have shown that many commercial packaging practices confuse and mislead shoppers, that some packages are misleadingly large in relation to their actual content, that some packages come in odd units so that prices cannot be easily compared with competing packages, that some so called "economy" sizes cost more per ounce than regular sizes,

Whereas studies have shown that the average family could save approximately \$250.00 a year if the provisions of this bill were in effect,

Whereas the efficient operation of our free enterprise system depends on well informed consumers making wise choices in a free marketplace, be it

*Resolved*, That this Special Convention of the American Veterans Committee endorse the Fair Labeling and Packaging Bill. We urge the Commerce Committee to promptly act favorably on this bill, be it further

*Resolved*, That copies of this resolution be sent to the President of the United States, Senator Warren Magnuson, Chairman of Commerce Committee and to Senator Philip Hart.

Passed unanimously by Special Convention of American Veterans Committee, Washington, D.C. Feb. 13, 1966.

---

**RESOLUTION OF TRUTH-IN-PACKAGING BILL BY THE B'NAI B'RITH WOMEN PASSED MARCH 1966.**

Whereas, shoppers spend a substantial portion of their income on the purchase of packaged goods, and

Whereas, every shopper has the right to compare products, and to obtain the most for what she spends, and

Whereas, as of today, the quantity of packaged contents can be printed in any size type, no matter how small, on any part of the package rather than the front, making it difficult to be seen, and

Whereas, most of our states have by statute or regulation established definite standards for packaging and labeling of consumer products, and

Whereas Senator Philip A. Hart and twelve other Senators have introduced a "Truth in Packaging" bill with the purpose of safeguarding the shopper's right to be informed of the truth, and

Whereas this bill (S. 985) authorizes regulations establishing minimum standards to clarify the listing of contents of packages, to make it possible to compare the prices of different products, to halt the use of confusing or misleading adjectives, and prohibiting other deceptive devices: Therefore, be it.

*Resolved*, That B'nai B'rith Women strongly urges the United States Senate and the United States House of Representatives to approve the Truth in Packaging bill (S. 985).

**RESOLUTION ON FAIR PACKAGING AND LABELING BY THE COOPERATIVE LEAGUE OF THE U.S.A., PASSED AT 24TH BIENNIAL CONGRESS, NOVEMBER 20, 1964**

Consumers are entitled to information they need to make rational, intelligent decisions in the marketplace \* \* \*. They are entitled to more informative labeling \* \* \*, to greater standardization of package sizes \* \* \* to meaningful product designations and standardized nomenclature \* \* \*. Much of this they must necessarily achieve through federal and state governments.

Adopted by the 24th biennial congress of the Cooperative League of the U.S.A., November 20, 1964, Chicago.

---

**RESOLUTION ON FAIR PACKAGING AND LABELING LEGISLATION BY THE LOUISIANA AFL-CIO**

Whereas every shopper has the right to compare products, the right to compare prices, and the right to get the most for what the consumer spends; and Whereas families, and in particular low-income families, can ill afford the waste of resources on products in the market place that do not give full value for the price paid; and

Whereas consumers can fulfill their responsibility to hold down prices only if they have clear and unambiguous information in order to reward those producers and distributors who offer the best value for the lowest price; and

Whereas hearings in the Senate have clearly indicated the necessity for Congress to establish ground rules for reasonable standards for weights and measures in consumer products: Therefore be it

*Resolved*, That Fair Packaging and Labeling legislation be enacted to assure that the consumer will be able to make an educated choice; and be it further

*Resolved*, That copies of this resolution be forwarded to each member of the Louisiana Congressional Delegation and to members of the Senate Commerce Committee.

---

**NAACP 57TH ANNUAL CONVENTION RESOLUTION ON ECONOMIC ADVANCEMENT****CONSUMER PROTECTION*****Fair packaging and labeling bill***

The NAACP strongly urges passage of the Fair Packaging and Labeling Bill (S. 985) which will provide "fair packaging and labeling to protect the shopper against deception, to remedy confusion, and to eliminate questionable practices."

***State consumer associations***

The NAACP urges its individual members and its units in the 10 States and 7 cities where consumer associations exist to give these associations full support, and in the 40 States where consumer associations do not exist, to work for their establishment.

---

**RESOLUTION ON TRUTH-IN-PACKAGING BY THE NATIONAL ASSOCIATION OF RETIRED TEACHERS PASSED AT CONVENTION, JULY 6, 1966.**

The NRTA delegate assembly urges the United States House of Representatives to enact a strong "Truth in Packaging Bill" at a nearly date.

---

**RESOLUTION ON FAIR PACKAGING AND LABELING LEGISLATION BY THE NATIONAL CONFERENCE ON WEIGHTS AND MEASURES PASSED DURING 51ST NATIONAL MEETING, JULY 11-15, 1966.**

Whereas, the National Conference on Weights and Measures has long provided leadership in a cooperative State-Federal-industry effort for nationwide uniformity in requirements for packaging and labeling of commodities in the interest of consumers; and

Whereas, under the leadership of the National Conference on Weights and Measures, a majority of the States have adopted similar laws and regulations in the cause of uniformity, and many industries, at great expense, have complied with these laws and regulations, especially as they apply to labeling; and



Whereas, in 1963, the 48th National Conference adopted a resolution of appreciation for congressional interest in "Truth in Packaging," legislation; and

Whereas, U.S. Senate Bill S. 985, "Fair Packaging and Labeling," as reported favorably by the Senate Committee on Commerce in May 1966 and subsequently passed by the Senate, in general is consistent with the aims and efforts of this Conference: Therefore, be it

*Resolved*, That this 51st National Conference on Weights and Measures, duly assembled in Denver, Colorado, this 51st day of July 1966, hereby endorses legislation on fair packaging and labeling to attain the goals parallel with this Conference; and be it further

*Resolved*, That this Conference endorses enactment by the Congress of S. 985 as passed by the Senate, but recommends, in order to facilitate the accomplishment of the bill's objectives, certain technical language changes, as follows:

1. Section 12, pertaining to the bill's effect on State law, should be clarified to reflect the view of the Senate Committee on Commerce, as published in the Report of the Committee, that "the bill is not intended to limit the authority of the States to establish such packaging and labeling standards as they deem necessary in response to State and local needs." Specifically, the Conference recommends the substitution of the words "are inconsistent or in conflict with" for "differ from" in said Section 12. This would make absolutely clear that State consumer-oriented weights and measures laws are not nullified, whether differing or not from Federal laws or regulations, if these are necessary for the protection of the citizens of the State and do not conflict with Federal laws or regulations so as unreasonably to affect the flow of products in interstate commerce.

2. The requirements for the declaration of net quantity of contents on the label under Section 4(a) (3) (A) should be expressed in terms of the largest whole unit or decimal fraction thereof, rather than being restricted to ounces or whole units of pounds, pints, or quarts. Declarations of quantities of length, area, and numerical count should be included in such requirements.

3. Since the words "accurately stated" in Section 4(a) (2) could be construed under present custom and usage to allow no measurement inaccuracy whatsoever, the Conference recommends adding the phrase "as is consistent with good packaging practice" after the words "accurately stated."

4. The parenthetical expression in Section 4(a) (3) (B), "(by typography, layout, color, embossing, or molding)," should be deleted, since the three critical points with respect to conspicuousness are type size, color contrast, and free surrounding area.

and be it further

*Resolved*, That copies of this resolution be transmitted to the appropriate committee or committees of Congress and to the Secretary of Commerce.

**RESOLUTION ON FAIR PACKAGING AND LABELING ACT AND TRUTH IN LENDING ACT BY THE NATIONAL COUNCIL OF SENIOR CITIZENS PASSED AT THE 5TH ANNUAL CONVENTION, JUNE 1966**

**CONSUMER PROBLEMS**

Because America's older people live, in the main, on inadequate fixed incomes, the National Council of Senior Citizens is deeply concerned that each dollar of that income provide a maximum of goods and services and that the elderly, as consumers, be adequately protected.

Recent testimony before the Senate Banking Subcommittee as well as other Congressional committees have indicated a growing trend toward deceptive packaging of foods and household products, items on which the elderly spend a substantial portion of their incomes.

Such practices make it exceedingly difficult to compare prices and quantities of packaged goods, and work a particular hardship on senior citizens. Because it will help avoid confusion, encourage fair packaging and labeling, and protect the shopper against deception, the National Council of Senior Citizens strongly urges the United States Congress to approve the Fair Packaging and Labeling Act (S. 985) in this session of Congress.

Similarly, recent evidence of disreputable practices involving concealment of unduly high interest rates on installment sales and other forms of consumer

credit require remedial legislation to protect the consumer who uses credit. For the elderly, purchasing major items and appliances on credit is often the only way those items can be obtained. The National Council of Senior Citizens therefore urges the early enactment in this Congress of the Truth in Lending Act (S. 2275) that would require lenders to state the full cost of credit simply and clearly and to state it before any credit contract is signed.

We believe that these two pieces of legislation can provide a whole new area of consumer protection in a way that would be more beneficial to older people and all others living on limited incomes.

---

**RESOLUTION ON TRUTH IN LABELING LAWS BY THE NATIONAL GRANGE FROM**

**1966 JOURNAL OF PROCEEDINGS**

"The Grange affirms its stand in support of Truth in Labeling Laws. We are particularly concerned at this time with the application of these laws to potatoes, dairy products, prepared and canned foods, and tobacco products."

---

**RESOLUTION ADOPTED BY NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION  
CONSUMER PROTECTION**

Whereas NRECA is an association of 979 consumer-owned and controlled electric systems, vitally interested in all matters affecting consumers; and

Whereas we recognize consumers have a responsibility in the economic life of this country to support with their patronage the honest and efficient producers and distributors who offer the best value for the lowest price: Now, therefore, be it

*Resolved*, That we support legislation that helps consumers fulfill their role in an intelligent and responsible manner by giving them access to clear, unambiguous information about products and services available for sale; and be it further

*Resolved*, That we support legislation that helps consumers shop for the best buy in credit by requiring a clear statement of the cost of credit and the annual rate of interest; and be it further

*Resolved*, That we support legislation that assures the safety of food, drugs, and cosmetics before they are offered for sale; and be it further

*Resolved*, That we reaffirm our support for full representation of the consumer in the highest councils of government and commend the President for again appointing a Consumer Advisory Council to work with his Special Assistant for Consumer Affairs; and be it further

*Resolved*, That we urge rural electric systems and their state and national associations to make consumer information available to their members.

---

**RESOLUTION ON THE FAIR PACKAGING AND LABELING ACT BY THE PENNSYLVANIA  
STATE COUNCIL, INTERNATIONAL ASSOCIATION OF MACHINISTS PASSED JUNE 19,  
1966**

**DRAFT RESOLUTION ON TRUTH IN PACKAGING**

Whereas consumers spend a substantial portion of their incomes in the purchase of food and household products, and

Whereas their income is eroded away unnecessarily when they are unable to compare prices easily in order to get the most for what they buy, and

Whereas President Johnson has called for legislation that will provide "fair packaging and labeling to insure the shopper against deception, to remedy confusion, and to eliminate questionable practices," therefore, be it

*Resolved*, That the Pennsylvania State Council International Association of Machinists strongly urges the United States Congress to approve the Fair Packaging and Labeling Act (S985), and that a copy of this resolution be sent to each member of the Congress.

---

**RESOLUTION ON TRUTH-IN-PACKAGING BY THE LADIES AUXILIARY OF THE KNIGHTS  
OF ST. JOHN, ASSEMBLED IN NATIONAL CONVENTION ON JULY 8-13, 1966, WASH-  
INGTON, D.C.**

Whereas women today comprise one of the largest groups of buyers of consumer products, it behooves us to beware of colorful and misleading packaging; and

Whereas in unity and with a common goal, we can awaken all members of our economy that we will no longer be confused as to price, content, or the definition of a serving; and

Whereas the time has come that we must let the segments of our economy, who are responsible for the packaging of all consumer products, know that they must state clearly and in bold type the truth. That we will no longer be misled by deceptive packaging. That a set of standards defining small, medium, and large be used for all packages. That sufficient information as to ingredients or composition, price, weight, and other information be placed conspicuously on the package. That, "What we don't know, *does* hurt us": Now, therefore be it

*Resolved*, That we in Supreme Convention take note that pending before the House of Representatives is H.R. 15440—"Fair Packaging and Labeling Act"; and be it further

*Resolved*, That each delegate and member of the Supreme Ladies Auxiliary of the Knights of St. John assembled in this meeting, immediately let her Congressman know that she endorses this bill. That each of us upon returning to our home contact as many members to do likewise. That we as one of the largest groups of shoppers demand to know what we are buying and not be misled by deceptive packaging. That the "Fair Packaging and Labeling Act" known as H.R. 15440 must be passed as soon as possible, and finally, be it

*Resolved*, That a copy of this Resolution be sent to the Chairman and all Members of the House Interstate and Foreign Commerce Committee.

#### RESOLUTION ON TRUTH-IN-PACKAGING BILL BY THE UAW INTERNATIONAL WOMEN'S AUXILIARIES PASSED MARCH, 1966

Whereas public hearings conducted by Senator Hart and others during the past year have shown that many commercial packaging practices confuse and mislead shoppers, that some packages are misleading large in relation to their actual content, that some packages come in odd units so that prices cannot be easily compared with competing packages, that some so called "economy" sizes cost more per ounce than regular sizes,

Whereas studies have shown that the average family could save approximately \$250.00 a year if the provisions of this bill were in effect,

Whereas the efficient operation of our free enterprise system depends on well informed consumers making wise choices in a free marketplace; Be it

*Resolved*, That the International UAW Women's Auxiliaries endorse the Fair Labeling and Packaging Bill. We urge the Commerce Committee to promptly act favorably on this bill; be it further

*Resolved*, That copies of this resolution be sent to the President of the United States, Senator Warren Magnuson, Chairman of the Commerce Committee, and to all committee members.

#### RESOLUTION ON PACKAGING IN STATES BY CONSUMER ORGANIZATIONS

The following consumer organizations have passed resolutions supporting Senator Hart's packaging bill:

Robert Barton, Secy., Association of California Consumers, 1507 Latham Square Boulevard, Oakland, California.

Dr. Thomas M. Brooks, President, Connecticut Consumers Association, Inc., P.O. Box 404, Storrs, Connecticut 06268.

Miss Marian Ego, President, Massachusetts Consumer Association, 92 Stimson Street, West Roxbury, Massachusetts 06783.

Mrs. Richard A. Zwemer, President, Consumers League of New Jersey, 20 Church Street, Montclair, New Jersey 07042.

William Matson, Chairman, Pa. League for Consumer Protection, P.O. Box 388, Harrisburg, Pa. 17108.

Ralph R. Reuter, Chairman, Metropolitan New York Consumer Council, 1710 Broadway, New York, N.Y.

Mrs. Joseph M. Klamon, President, St. Louis Consumer Federation, 8007 Stanford Avenue, St. Louis, Missouri 63180.

(The following material was submitted for the record:)

**STATEMENT OF JERRY VOORHIS, EXECUTIVE DIRECTOR OF THE COOPERATIVE LEAGUE OF U.S.A.**

Mr. Chairman and members of the committee, my name is Jerry Voorhis and I am executive director and president of the Cooperative League of the USA. The Cooperative League is a national federation of cooperative and mutual enterprises. Through its member organizations some 18,000,000 different American families provide themselves and their neighbors with insurance, credit and savings, farm supplies, marketing services, consumer goods, electricity, housing, health care and other necessities.

I have requested opportunity to present this testimony today, in support of Truth-in-Packaging legislation, as introduced by the distinguished chairman of this Committee and advocated for many years by Senator Hart of Michigan and numerous other leaders in both the House and Senate. It is my earnest hope that the House of Representatives, of which I myself once had the honor of being a member, will produce a better Bill than the Senate did.

So my testimony does represent in a very real way the appeal to this Committee by many millions of consumers, on farms and in cities, in towns and suburbs, well-to-do, and not so well-to-do. Most of all, I present it on behalf of our fellow citizens who because their incomes are meager must make every penny go as far as possible in procuring needed food for the family.

The obvious aim and purpose of the pending legislation is to enable the buyers of packaged goods to make an intelligent, informed choice—and to be able if he or she so desires, to obtain the maximum amount of nourishment or service for each dollar spent.

Certainly such a purpose is in the very best—and most important tradition of a free and competitive economic system. Equally certainly anything which operates to prevent intelligent and informed choice violates that tradition and the principles upon which our economy is supposed to rest.

It would seem, therefore, that there should be no opposition whatsoever to Truth-in-Packaging legislation, but that all concerned—producers and consumers alike—should be here speaking in support of it.

I am still in some bewilderment as to why this is not the case.

Until very recently ours has been a production-minded nation. Only in rather recent years have we begun to realize the importance of the one economic interest which is the only one which all of us share in common—our interest as consumers. The fact that we have commenced to do this is evidence of a growing maturity in our national life and in our thinking.

I may as well confess at the outset that when Truth-in-Packaging legislation was first proposed, my first unthinking reaction was that it might not be of paramount importance in a world whose very existence is threatened each day by a situation of lawless international anarchy among supposedly "sovereign" nations armed with weapons of such ultimate and complete destructive power that their use against an enemy would certainly condemn their own people and all their values to destruction along with most, if not all, of the rest of mankind.

A world crisis in hunger and need for food looms ahead of us. And deep and as yet unresolved conflicts still afflict us even within our own most richly blessed nation.

In such a context one may superficially answer that the size and standard weight of a package or can on the shelf of a market is of not great consequence.

And I suppose were we dealing with only one can or package that would indeed be true.

But we are not.

We are dealing with hundreds of millions of cans and packages. And misunderstanding, deceptive or even confusing packaging or labeling can add up to a loss of many billions of dollars for the consuming public as a whole. And such loss will, of course, fall with especial weight upon the very people of lower-income whom we are otherwise seeking to help find a way out of poverty and to a better life.

The mere suggestion that confusing weight and sizes, deceptive advertising "gimmicks," and lack of opportunity for simple accurate price comparison is a matter of small consequence has drawn in my own experience the most heated and explicit and detailed denials that these are of little consequence from housewives, mothers, skilled accountants and others with whom I have talked:

Perhaps my most vivid recollection is of the reaction of a man whose profession is that of an accountant. He told of how he had gone to a market and observed

the wide variety of sizes and contents and alleged qualities of a certain kind of canned vegetable. He had meticulously—and with great labor—calculated the cost per ounce of each size and brand—almost none of which, he stated, were set forth in simple, understandable full ounces, pounds, quarts or other measures. He then noticed shoppers come by and make selections and he was astounded at how few of them actually chose the "best buy." He calculated that with respect to this one kind of vegetable alone at least 100 mistakes per year are being made by about 50,000,000 shoppers or 5,000,000,000 mistakes. If each mistake costs only 2¢, the total loss to consumers in wasted buying stands at \$100,000,000 a year for this item alone. Of course, I know that these figures are no more than rough estimates. I also know full well that other factors beside the cents per ounce cost may be of importance, especially to the more discriminating shoppers. But I am mostly concerned here with the hard-pressed housewives and mothers and certainly she should have the opportunity to base her decision on a comparison of costs per ounce or pound of nourishment. Unless she can begin at that point, her decision can hardly be an intelligent or prudent one in any case.

The situation might be somewhat different if consumers were not presently bombarded with such a strident flow of advertising on behalf of the very confusing practices in which predominant elements in trade are now engaged. But the National Commission on Food Marketing of which Congressman Cunningham was a member, has just recently reported that whereas food chains spent \$560,000,000 on food advertising in 1950, they spent \$2,172,000,000 in 1964. They spent less than \$1,000,000 on trading stamps in 1950 and \$680,000,000 in 1964. The Commission comments that neither of these expenditures adds a single cent to the value of the food bought by consumers.

Again, the situation might be somewhat different if there were not ample evidence at hand that confusing ballyhoo, the use of deceptive names like "jumbo," "economy size," "cents off," and the like, and the lack of accurate labeling and simple arithmetic were at all necessary as marketing devices.

But in many cities across the country cooperative markets and supply stores, belonging as they do to their own patrons and users of their services, are doing very well indeed—incidentally, without any tax advantage over their competitors. For years these cooperatives have featured "co-op label" items provided by National Cooperatives. Such "co-op labeled" items have always carried what we call "informative labeling."

"Informative labeling" is the kind of labeling—and packaging—which consumers, given the decision as they are in cooperatives—have decided they wanted in their own stores. Let me read to the Committee an example of such labeling. It is taken from a can of co-op brand red salmon which is the best grade.

#### CO-OP BRAND

#### RED SALMON

Salt Added  
Contents 1 lb.

Packed for National Cooperatives, Inc.  
Chicago, Illinois

#### CO-OP FOOD FACTS

The Red, Sockeye, or Blueback Salmon has a deep red color, readily separating into medium small flakes when canned. It is firm in texture and is particularly adapted to salads or for eating as it comes from the can. It may also be used for sandwiches and cooked dishes, but CO-OP Pink Salmon, costing less, is equally suitable for these purposes.

Canned salmon is an excellent source of protein, both in quantity and quality, comparing favorably with beef. There is relatively little difference in the food values of the principal species of salmon.

A can of salmon furnishes a liberal supply of calcium and phosphorus in the proportion necessary for building sound bones and teeth, plus a favorable supply of Vitamins "A" and "D" in the fat and oil.

#### GENERAL DESCRIPTION

Size of Can..... No. 1 Tall  
Servings ..... 4  
Cups ..... Approx. 2

Packed for National Cooperatives, Inc., Chicago, Illinois

We do not claim an exclusive for cooperatives with respect to all aspects of informative packaging and labeling. Some other producers try to set similar standards. And we believe that many more conscientious manufacturers would be glad to do so if given the encouragement—and protection from misleading practices by competitors which this legislation would give them.

But we do contrast this type of packaging with the three-quarter-filled box of cereal with no clear designation as to its net content or the "large economy size" which may indeed be more expensive per ounce or pint than the regular package, or the "cents off"—from what?—inducement, or the 14 $\frac{1}{2}$ -oz. can or package down from a pound, but selling at the same price as the pound formerly did.

The Hyde Park Cooperative store—Chicago's largest single supermarket, has won part of its rapid increase in trade by a practice of pricing many staple items on a cents per ounce basis. Thus the shoppers can compare costs at a glance. The store, of course, has expended much time of its personnel—and incurred considerable expense in computing price on this basis.

Our question is why should not such pricing by retailers be rendered less difficult by having the manufacturer state the package content in standard, understandable quantities?

What we really have to say to the Committee can, I expect, be summed up in two words: "Why not?" What supportable reason is there why net weight should not be prominently displayed on every package or can—and in simple terms like "ounces, pounds, pints, quarts," etc.? Who on earth is benefited by a 14 $\frac{1}{2}$ -oz. package or can of anything? One suspects that the only people benefited are those who actually do not want the purchasers to be able easily to compare the per unit cost of their product with that of a more forthright competitor.

Congressman Staggers has presented an excellent bill. We believe it on the whole a better one than that which passed the Senate.

Especially helpful, it seems to me, are the provisions which enable the Food and Drug Administration and the Federal Trade Commission to define what "a serving" is to mean and the authority to regulate the use of "cents-off" labels. Furthermore, passage of the bill should give the people a situation where all competing "small size" packages or cans will be known to be of the same content, and all the competing "large size" also of the same content—and so on. There will be no more "jumbo" quarts—just quarts—which should be good enough for anyone. And it may be observed in passing that it is hard to find any industry that has shown more imagination in its packaging or a greater variety of appealing sizes and shapes than has the liquor industry. But that industry has done all this within a framework of standard, simple measures which are always the same and where purchasers can in any instant compare prices and determine the items of lowest real cost.

One or two suggestions for even further strengthening of the bill we would like to make for the Committee's consideration.

One would be to require not only a statement of the ingredients, but to show the percentage of each such ingredient contained in the package. Nutritionists will testify more effectively to the importance of this than I can.

Another means of strengthening the bill would be to ban completely the "cents-off" gimmick. It is almost necessarily a deception. First, because no one knows what the "cents-off" is off of. Second, only the retailer can do the final pricing. And he may or may not be either willing or able to fix the price so that the designated number of cents are actually "off" of anything.

Third, we wonder whether the original idea of having only one step in fixing standard weights and measures was not really better—and certainly more direct—than the presently proposed two-step process. Certainly voluntary action is a good thing—and voluntary compliance. But since the basic aim of the legislation is to bring about reasonable standards might it not be just as well to simply authorize the responsible government agencies to do that after full and fair hearings have been held?

Changes and departures from past practices are often difficult. But seldom as difficult as they are represented to be by those required to make the changes. And in the case of the pending legislation, the final result will, after all, be to put an end to irrational and useless and costly changes in the future. Competition could then be centered in the fields of quality and price where they belong.

And I believe, in the end, even those manufacturers who now oppose the Bill will be better satisfied.

And I know the consumers, who after all, are all of us, will be far more content and much relieved and able to save, I expect, several billions of dollars of now wasted purchasing power each year for expenditure in more useful ways.

---

STATEMENT OF DOROTHY S. WHEELER, BOARD MEMBER, GREENBELT CONSUMER SERVICES, INC.

On behalf of the Board of Directors of Greenbelt Consumer Service, Inc., and speaking for our 18,000 member families, I am submitting the following statement in support of H.R. 15440:

Greenbelt Consumer Services is the largest urban consumer cooperative in the United States. Our gross sales last year were more than \$32,000,000 with \$27 million coming from sales in our 12 supermarkets. As a cooperative we are naturally interested in making shopping as economical and pleasant as possible for our members and other customers. As you know, the basic concept of a cooperative is that of consumers pooling their resources to better serve their own needs. We attempt to provide the basic needs of our customers with a net margin only half of that of the industry as a whole.

In October, 1961, with a mandate from our owner-customers, we testified before the Hart subcommittee investigating packaging and labeling practices in the supermarket industry. Our concern then as now, was that even though we are consumer-oriented instead of profit oriented, the current trends in packaging and labeling of products are preventing us from doing an adequate job.

Prior to our testimony, a committee of members met with our grocery buyer, Mr. Donald Lefever, to discuss many of the packages on our shelves. We found many practices that we considered either deceptive or confusing. Among these were:

1. Constant reduction in size in such small quantities that the consumer is unaware of the change.
2. Lack of standard sizes and terms making comparison difficulties \* \* \* this included such meaningless adjectives as giant, jumbo, family, economy, etc.
3. Small or hidden labeling, particularly to weight of contents.
4. Incompletely filled containers.
5. Picturing product on the label in quality or color superior to actual contents.
6. Cents off deals that prove nothing.
7. Misleading claims as to nutritive value.

It was the committee consensus that the first four items on our list were causing the biggest dent in the housewife's grocery budget. We were also concerned that the confusion is probably even greater for the lower income groups because of lack of education and training. As a cooperative we seek to help this group but we also seek to lessen the confusion that even the more affluent housewife feels as she faces the yards of items on the grocery shelves . . . each making extravagant claims via the label. Even if the consumer can well afford an extra cent or two to get a smaller or more convenient package, we owe her the opportunity to see how much it is costing . . . without having to have a slide rule built into the handle of the grocery cart.

With over 70% of all food in this country sold in supermarkets, the consumer can no longer depend on the help of a friendly corner grocer. Therefore, it is certainly time to eliminate the label competition and to get back to basic price and product competition which is much more meaningful. Since the packaging and labeling industries are well organized and since the consumer is surely the largest *unorganized* group in the U.S., he must look to the government to step in on his behalf. He is protected against short weights and measures and against poisonous ingredients and it is now time to protect against the petty larceny that occurs each time he is enticed into making a purchase because of a misleading label.

Having participated in the early hearings, we have watched with considerable interest the progress of the legislation from the introduction of S387, though the passage by the Senate of S985 . . . and now through your committee hearings on HR 15440.

While we think that some of the discretionary provisions should be mandatory (such as prohibition of abuses of cents off deals) and while we would prefer to see more teeth in the section concerning the voluntary product standards of the Department of Commerce, the legislation as introduced by Mr. Staggers would certainly go a long way toward alleviating these problems and changing the practices we consider most objectionable.

HR 15440 would certainly introduce an element of standardization into packaging that would eliminate the problem of constant reduction in size and also standardize terms so that the labels might once again be meaningful when the consumer must choose from a large selection of similar items.

The requirements for labeling weight and contents certainly cover our third objection. That leaves our item 4, slack fill. This we feel is not adequately covered by the provisions of T.R. 15440 and we strongly urge consideration of an amendment to cover that point.

Also, we would like to suggest that some provision be made similar to the Monroney Amendment of S985. As consumers, we know we need the protection offered by HR 15440; but, as retailers, we understand the problem of inventory when sudden changes are made.

It is of utmost importance that the Congress of the United States pass this legislation so vital to each of us. We sincerely hope that your committee will find this statement by consumer representatives helpful in making your final decision on behalf of the American consumer. Thank you.

---

STATEMENT OF GEORGE LITTLE, PRESIDENT, CONSUMERS COOPERATIVE  
OF BERKELEY, INC., BERKELEY, CALIF.

We urge the adoption of H.R. 15440, the Fair Packaging and Labeling Bill. This legislation is desperately needed to enable shoppers wishing to spend their money in an economically sound fashion to make sensible choices in the market.

The Consumers Cooperative of Berkeley is owned by 37,000 member-families. Our business includes seven supermarkets. Over the past several years, hundreds of our members have expressed themselves as being in favor of Truth-in-Packaging legislation. Many feel that this type of legislation is important not only because of the specific help it will give them in their shopping, but also because it is a step towards more honest, straightforward merchandising which they feel should characterize our economy.

We are convinced that consumers want to shop on the basis of quality. It is *what is inside the package* that counts most with them. But few consumers have unlimited incomes, so they must balance cost and quality. H.R. 15440 would aid shoppers immensely by simplifying the cost comparison for similar items since this is basic for rational choice.

We applaud the provisions of the bill that make it easier to see the net weight and the provisions that eliminate confusing terms such as "giant quart". We are also glad to see the Food and Drug Administration and the Federal Trade Commission given authority to 1) determine what is a serving, 2) define words such as "family size", and 3) regulate "cents off" labels.

We think that it is especially important to retain the packaging provisions of this bill. Although these are quite minimal, they will do more than the other provisions to permit shoppers to make sensible choices. To date, there has been a steady multiplication of package sizes on grocery shelves, including small changes of weight for products that have been on the market for a long time. A very large number of these new sizes have no reason for existing except to give the product a competitive advantage over a similar one which may weigh slightly more. Thus the 24 ounce size of salad oil has almost driven the quart of oil off the market. Brand A crackers has changed from a 16 ounce box to a taller 18½ ounce one with a slightly lower price. To the hurried shopper, Brand A now seems like a better buy than the pound box of Brand B crackers. Fourteen ounce rice packages have just about eliminated the one pound rice packages in our California markets. This is happening in many other lines of groceries. The packaging provisions of H.R. 15440 will help manufacturers and distributors give consumers standard sizes (or a limited number of sizes since not all products can be packed in standard sizes) by preventing others from continually lowering the net contents of the foods in the package. Changes in packaging are expensive and it is the consumer who pays for them in the price he pays for the item.



We note that in California the number of bread and milk sizes permitted are very limited and yet manufacturers seem well satisfied and their sales are not restricted by this control. When it was proposed in 1964 that the sale of three rather than two bread sizes be allowed in retail stores, the baking industry and the retail grocers opposed it.

Our cooperative wholesale operations at the national and regional levels carry about 700 private CO-OP label products. Our cooperative wholesalers make every effort to provide member-shoppers with products packaged in sensible sizes and shapes. This is often impossible because we have a choice of only what the manufacturers have to offer. For example, a few years ago our apple juice supplier packed a jug that looked like a gallon (especially when it was the only jug on the shelf), but it actually contained only 3 quarts 1 ounce. We carried this under our label because it was such a good apple juice. After several years of effort, we were able to persuade the manufacturer to put in special machinery to pack a gallon just for us. However, we are usually not this successful in our efforts to obtain standard sizes. Most food firms would not go this far to help consumers. An industry-wide standard for apple juice in pints, quarts, half gallons and gallons is the answer.

In our stores we have tried to help shoppers solve these problems of cost comparison by providing price per pound lists of items like cereals, detergents, tuna fish, mayonnaise, oil, lunch meats, rice, pastes, etc. This is some help to shoppers but it is expensive and time consuming to prepare these charts and keep them up to date. We think the solution is more help for the consumer *before* the packaged goods reach the supermarket shelves.

We strongly urge the passage of H.R. 15440 which we believe will be most helpful to all consumers.

---

STATEMENT OF MINNESOTA CONSUMERS LEAGUE, ST. PAUL, MINN., SUBMITTED BY  
TOBY LAPAKKO, PRESIDENT

Mr. Chairman, my name is Toby Lapakko. I am president of Minnesota Consumers League, a statewide association that is less than a year old and already represents thousands of consumers in Minnesota.

Our members are seriously and genuinely concerned about the packages they find in supermarkets, variety stores, drug stores, department stores, and other establishments. They find hidden statements of net contents. Meaningless size descriptions such as "giant quart" and "full half gallon" are common. Many products lack standard size packages so that cost comparisons become extremely difficult. They find "cents off" statements that are inaccurate, misleading, and deceptive. The word "serving" means one thing on one package and something quite different on another package of the same product.

This confusion is costing consumers quite significant sums of money each year. Our members have estimated that the inability to compare prices of the same or similar products costs them 10% of what they spend for food and household supplies. The money that deceptive packaging extracts from consumers' pockets each year represents a significant addition to the cost of living. Many members of Minnesota Consumers League simply cannot continue to make ends meet unless this chaos comes to an end.

Moreover, the consumer's inability to compare prices of the same or similar products means that he cannot achieve rational choice. Without rational choice, the nation's economic affairs are rudderless. Therefore, we hope very much that Congress will this year enact meaningful truth-in-packaging legislation, and we believe HR 15440 is such a bill. We urge the House Committee on Interstate and Foreign Commerce to send this bill to the floor with its unqualified endorsement. We in Minnesota are confident that the House will pass a stronger bill than the one enacted by the Senate.

This legislation gives Food & Drug Administration and Federal Trade Commission some authority to standardize package sizes. H.R. 15400 encourages industry to initiate voluntary standards procedures through the Department of Commerce. The committees that the Department would create would require that retailers, manufacturers, and consumers be represented in establishing not only standard package sizes for a particular product but quality grades, standard nomenclature, and standards of package fill. If industry fails to initiate this voluntary standards procedure or if an industry fails to accept the standards worked out under the Department of Commerce authority, FDA or FTC is, under

H.R. 15440, authorized to establish standard package sizes. This is as we believe it should be.

The initial proposal would have permitted FDA and FTC to standardize package sizes after formal hearings. While this is a more direct way to accomplish the same objective, we concur in your judgment that the two-step procedure outlined in H.R. 15440 will better serve the needs of consumers. We hope, however, the Committee recognizes that this is a compromise and will refuse to weaken further the authority of these agencies in the bill it sends to the House Floor.

H.R. 15440 will not standardize the appearance of packages on the supermarket shelf. Liquor, flour, milk, sugar, vegetable shortening, frozen concentrated fruit juices, and many other products, today are packaged in standard sized packages, and there is no tendency whatsoever to curb the genius of package designers.

Nor is it true that H.R. 15440 will increase manufacturers' costs. Firms are already changing packages, package sizes, package designs month after month after month. The consumer pays for all these changes, of course. H.R. 15440 will add nothing to this burden. Indeed by introducing greater standardization of package sizes it may well reduce that burden. In fact the bill might well be referred to as the "efficient packaging bill."

We urge the Committee to act soon and to approve strong, meaningful, helpful, effective packaging legislation.

---

STATEMENT OF BLUE A. CARSTENSON, ASSISTANT LEGISLATIVE DIRECTOR,  
NATIONAL FARMERS UNION

I am pleased to testify on behalf of the National Farmers Union on the Truth in Packaging Bill.

The American supermarket has been turned into a place of deception by the Food Manufacturers. We ask, as did George Washington in 1790, for Federal concern and action to better control the weights and measures in the market place.

The farmer and his family get the short end of the deal both ways. The U.S. Food Marketing Commission shows beyond doubt that the food manufacturers and the food companies are short changing the farmers by unethical marketing practices. Most farm families today buy much of their food in the supermarket just as his city brethren do. Our members figure that even with careful shopping they lose 10% of their food dollar in the supermarket because of deceptive packaging practices. It galls them even more because they know how much the farmers get for their food and how much the supermarkets charge.

There is no issue other than 100% of parity which rouses the farm family today as does the issue of Truth in Packaging. I have personally made speeches in 16 states to farm groups over the past year and I can say that nothing brings a response like talking about the Truth in Packaging Bill. The farmer is tired of being blamed for the greed of the food marketing industry, and asks Congress to restore honesty to the food industry and their new packaging practices. It is no longer the butcher whose thumb the consumer must watch but the food packager and manufacturer.

The Farmers Union, at our 1966 national convention, passed the following resolutions as a part of our "1966 Target Program":

"Enact a 'truth-in-packaging' bill to stop deceptive labeling, packaging and pricing of consumer products and to establish ground rules on reasonable standards for weights and measures in packaged products."

Here are a few of the facts in the food business:

Prices paid for food by the consumer have increased 34% since 1953, but prices paid to the farmer have dropped 10 to 15%. The consumer buys more today than in 1950. The average consumer pays \$105.00 more for food than he did in 1950. The farmers get \$1.00 of that increase, the food companies get \$104.00.

Advertising and packaging are where the money is being spent by the food industry because this is where the profits are made. Food retailers spent 10 times as much for advertisement as they did in 1950, according to the Food Year Book, and food manufacturers advertisement has tripled. In 1964, the food companies alone spent \$1.4 billion on advertising domestically produced farm products. 85% of the goods in supermarkets are pre-packaged, according to Consumers Union.

By clever packaging, backed up by advertising, food companies can make an extra 10% on their merchandising. In Pennsylvania, Mrs. Genevieve Blatt

found that it was closer to 14%. This, plus the less than ethical marketing practices revealed by the Food Marketing Commission, makes it possible for the big food companies almost never to lose money and have an excellent return on investment dollar for such a low risk field. It is the farmers and the consumers who take all the risk and usually get short changed in the market place.

Looking at the manufacturing companies and how much emphasis they place on packaging and advertisement, the Natl. Commission on Food Marketing reported:

	Percent
Total net sales-----	100
Cost of ingredients-----	20.7
Manufacturing payroll-----	10.8
Ingredients and labor-----	31.5
Other manufacturing costs-----	6.8
Cost of packaging-----	14.4
Cost of advertising and sales-----	22.1
Packaging and promotion-----	36.5
Administration and distribution-----	11.1
Net profits before taxes-----	14.1

The cereal manufacturers spent more on promotion and packaging than on labor and ingredients that they buy from the Miller and other places.

Is it any wonder that the fine art of deceptive packaging has developed, shaving off  $\frac{1}{4}$  inch here or advertising a "New" product when the only thing new is the package which has been altered, usually to the detriment of the consumer? Is it any wonder that it is difficult to compare-shop among cereals? When it becomes difficult to compare-shop, in most families the kids end up making the decision based upon advertising gimmicks and the pictures on the back of the package, the coupons or the gismo in the package. We ask for honesty and ethics in packaging.

Here are some of the practices which have been reported to us. We ask you to decide as to the ethics of these practices.

Not too long ago you could buy soft drinks in bottles containing 6 oz,  $6\frac{1}{2}$  oz,  $6\frac{1}{2}$  oz, and 7 oz.

A  $1\frac{1}{2}$  lb. of peanut butter in Rhode Island price was 69¢. Two weeks later marked "2¢ off" actual price 71¢. Two weeks later marked "4¢ off" actual price 73¢.

A major diet soft drink advertised as "same Price"—"get two extra bottles free"—gave two more bottles but a total of 2 less ozs. of soft drink.

In most supermarkets, you can't buy 1 lb. of rice. You can buy 14 ozs. for 29¢, 12 ozs. for 25¢, 1 lb. 12 ozs. for 35¢, 1 lb 8 ozs. for 47¢ or 2 lbs. 10 ozs. for 59¢.

A home cleaning product advertised in the Washington Star

7¢ OFF	14¢ OFF
15 oz.	1 pt.
btl. 32¢	12 oz. 55¢
	btl.

One product has 40 different sizes under 5 lbs.

One can of "Mixed Nuts" contains 496 peanuts plus  $\frac{1}{2}$  of one almond. Potato chips come in 74 different size packages. Another product has 40 different sizes under 5 lbs.

A wheat cereal's old package was 1 lb. 2 ozs., new package was  $14\frac{1}{2}$  ozs., and was the same price 39¢. The ingredients were the same and gift coupon the same, but a 20% increase in cost. A corn cereal's old package was 8 ozs. and new package was      ozs, but both cost 25¢.

A New York supermarket marked both a 6 oz. and 7 oz. jar of the same brand of coffee \$1.03. Both were labeled 10¢ OFF. In Pennsylvania, of 1 million packages checked 14% were short weighted.

The Weights and Measures Division in Louisville, Kentucky found that of 13 thousand packages weighed 15% were improperly weighed.

The Attorney General's office in Michigan found 4 out of 10 meat packages were underweight.

In Wisconsin, a shopper for the "best buy" in "Giant size" detergents found 18 different sizes, each different in net contents. Using a computer after getting home, he found that his seemingly "best buy" cost  $17\frac{1}{2}\%$  more than another brand in the same market.

I have brought a shopping bag with me and I would now like to display some of the practices which exist in our supermarkets.

The Progressive Grocer studies show that the average shopper in a supermarket spends \$13.50 in 15 to 18 minutes purchasing 31 items out of the 6000 items in stock in 50 different locations in the store. They spend less than 10 seconds in the detergent section. Half of the items are impulse purchases. It is also a fact that a significantly big percentage of women who need glasses do not wear them to the store for vanity reasons. But I do not come here to plead the case of the housewife although I represent over  $\frac{1}{4}$  million farm housewives. I come to plead with you on behalf of the men farmers who are asked to go to the store to pick up a few items in the store when they are in town. It is us men that really get taken. The women have usually learned about the "cents off" racket. The women are familiar with the short weights and packaging practices, but us men really get taken.

At our recent Convention of Farmers Union, we had a display on Truth in Packaging and we gave away prizes for the persons who guessed the correct weights on paper towels. The only winners were two women who came up and didn't look at the weights or packaging but lifted each one and then guessed on the basis of experience and a fine sense of feel. Even two teenagers with slide rules failed to get the correct answer. Here are the three packages which were used:

If roll "A" of paper toweling contains 125 *double-layer* towels, each 11.1" X 10.8" . . . . and costs 39¢ . . . .

. . . . and if roll "B" contains 185 *single* towels, 9" X 11" . . . . and costs 27¢ . . . . and if roll "C" contains 120 *double* towels 11" X 9 $\frac{3}{4}$ " and costs 22¢ . . . .

Here are some commonly misleading items found in most supermarkets:

Paper Towels—even though they all fit the same holder, it is impossible to compare the size and quantity of the towel.

Coffee—"cents off"

Potato Chips in a box—many have large pockets of air at the top.

Baloney—the color of the picture of baloney on the cover is redder than the meat.

Cold Cuts—price stickers often cover weight.

Meats—large proportion of packages are underweight and have only the best side visible to the consumer.

Hand Soap—most have no weight and a "medium size" is bigger than a "bath size" which is bigger than the "large size", etc.

Detergents—"cents off"

Soft drinks—offering "extra bottles free" but reducing the size.

Candy—in "stand-up boxes" with "see through window" in the bottom makes them appear full when they are not.

*Paper toweling all fitting standard kitchen dispenser*

	Rolls per package	Size in inches	Number of towels	Marked price (cents)
Brand A, "fine"-----	2	9 by 11-----	250	37
Brand A, "large"-----	1	9 by 11-----	185	25
Brand B, "jumbo"-----	1	11 by 10-----	162	4/98
Brand B, "twin pack"-----	2	11 by 10-----	108	3/95
Brand C, "double layer"-----	2	11.1 by 10.8-----	75	30
Brand D, "pink"-----	1	11 by 9 $\frac{1}{2}$ -----	200	29
Brand D-----	1	11 by 9 $\frac{1}{2}$ -----	120	2/37
Brand E-----	2	11 by 10-----	108	37
Brand E, "big roll gala"-----	1	11 by 9 $\frac{1}{4}$ -----	200	43

The supermarket today resembles a party or circus in design with pleasant music and all the tempting goodies. The game played by the food packagers is the game of blind man's bluff and the consumer always wears the blindfold. Here is another game:

*Hand soap (regular size)*

Brand	Price	Weight on scale (ounces)
A.....	3 for 34 cents.....	3.7
B.....	4 for 37 cents.....	3.5
C.....	4 for 35 cents.....	3.5
D.....	4 for 32 cents.....	3.5
E.....	2 for 29 cents.....	3.5
F.....	4 for 45 cents.....	3
G.....	2 for 29 cents.....	3.9

**Which is the best buy?**

These companies are not ones that respond to public pressures and even Congressional hearings such as have been conducted in the Senate and that you are now carrying out. They are motivated by profit and let the public be hanged. The farmer knows too well about their ethical practices. He knows that there are only three ways to keep the food industry honest and ethical. One is by laws to control honest weights and measures and the second is legislation to control marketing practices as recommended by the U.S. Commission on Food Marketing and third are by the development of cooperatives as recommended by the Food Marketing Commission which also requires Congressional action. The following pages of testimony show that the food industry understands only one language and that is the language of laws which can be enforced.

In short—the same giants and generals of the food industry which are squeezing out the family farmer by unethical practices are also gouging the consumer. It is the profit-monopoly system gone wild with controls and unethical practices like those of the stock market in the 1920's. The profits over investments in these food companies are tremendous, matched only by those of the drug industry and those companies involved in the race for the moon and space. The drug industry has not been known for its ethical advertising or its generosity in sharing lower costs with the consumer. The extent of the profit making by a few of the big food and chain corporations is shown in the accompanying table.

The tangled arms of these food giants are not content with these big profits but they want more. Their latest moves have been to start taking over the farm production. They have already forced out many of the small and middle size food producers, many of the small independent grocers, many of the small independent distributors, many of the small and middle size meat packers and many of the small shippers. The feed companies and other off-the-farm corporations control 95% of the chicken production. They have erected chicken factories where a million chickens are raised at a time without ever seeing the sun or touching the earth except by accident. They are manipulating the cattle markets with their feed lots in order to drive the cattle raisers out of business.

Today the chains dominate the food markets. The big chains do over 1/2 of the food retail business—even more in metropolitan areas. In Denver, our headquarters city, 4 chains do 90% of the food business. The big chains have vast purchasing power, warehouses, packaging operations, own products operations, food processing plants, and even feed lots.

Meat is a good example of how some of these chains operate. The price of beef is set by these chains every Wednesday in most markets. The leading chain lets the packer or middle-man know what he will pay for beef carcasses on that day and the prices becomes the price for the other large purchasers. Domination of the market is facilitated in some instances by feed lot operations which allow the chains to get in or out of the market regardless of the supply and demand. The retail steak prices are practically divorced from the price of beef cattle.

For example, in December 1962, the National Tea Company, the third largest chain in the United States, (Big D Stores), and part of a mammoth international food combine reaching into four continents and headed by W. Garfield Weston, decided to use its economic power to manipulate prices.

Normally, National Tea purchases approximately 1500 head of cattle a week from the government-regulated stockyard. Suddenly, it got out of the market, purchasing in one week as few as 11 head. Presumably it utilized cattle from its own feed lot which has a capacity of 75,000 head. The result was a catastrophic decline in the price of beef cattle which fell from 30¢ to less than 20¢ in a few weeks. As a result, thousands of feeders and ranchers were wiped out. Consumers did not benefit. The retail price of steaks and other cuts remained the same during the period.

The market power of the chains in the United States has become so great that they dominate the price of many food commodities. They use their power to switch from one similar commodity to another in their sales promotions. If chickens are high they push beef, or pork, or lamb, and when excessive supplies of broilers and other poultry push the price down they buy up these supplies at below cost of production. Feed companies having taken over poultry production now find themselves being squeezed by the chain. The big fish in America have eaten the little fish—and now are eating the medium sized fish.

Is there any wonder that the big chains allow such practices as false colors on the picture of processed meats? Is it any wonder that they allow meats to be packaged to conceal fat or gristle? Is it any wonder that they manipulate the price of meat so that the cost of bologna is more than the price of round steak? Is it any wonder that they push sirloin steaks at a loss as "come-on" for the housewife so that she can make her other purchases in the maze of packaging? According to one source, 70% of all purchases in a supermarket today are unplanned, spontaneous, impulse purchases. That is where the big money is—in those attractively deceptive packages and confusingly-priced items.

The chains and food giants promote the idea that they are efficient and clean, but the court records show that their ethics leave much to be desired. Here are a few examples of the ethics of these giants:

The Department of Agriculture found that Swift and Company was using a recently acquired meat packing plant in Boise, Idaho, to break the market and the small independent meat packers in the area by purposely selling at a loss. They escaped prosecution because in the name of the "great god of efficiency" they had destroyed their key records every 6 months.

National Dairy Products, operating in 4 continents with a US-Canadian sales of \$1.5 billion, was caught by the courts in a price fixing conspiracy in Western Missouri in 1959. They were conspiring and working out agreements designed to artificially drop the price of milk, then stabilize the price, then raise the price, in order to break the small milk producers. Even while National Dairy Products were in the courts, they were conspiring to cheat the government through the elimination of competitive bidding on the milk being supplied to U.S. military installations.

Since 1920, over 7,000 small milk production distributors have been swallowed up by mergers, take-overs and bankruptcies. Price wars and price manipulation have helped speed the process. Price wars in Missouri, for example, have driven the price of milk down as low as 8¢ a quart. Today, 8 dairy and milk chains sell ½ of the milk in the U.S. Their practices are rough, to say the least.

#### BORDENS

The Supreme Court of the United States found the *Borden Company* guilty of violating the Robinson-Patman Act on June 25, 1962. Justice Clark said: "Free enterprise is not free when monopoly power is used to breed more monopoly. That is the case here unless store-by-store costs are used as the criteria for discounts. This case is thus kin to that in *Moore v. Mead's Fine Bread Co.*, 348 U.S. 115, where the lush treasury of a chain was used to bring a local bakery to its knees. Here, as there, the chains obtain a 'competitive advantage' not as a result of 'their skills or efficiency' but as a consequence of other influences. There price-cutting was the weapon. Here it is the discount. Each leads to the same end—the aggrandizement of power by the chains and the ploughing under of the independents. The anti-trust laws, of which the Robinson-Patman Act is a part, were designed to avert such an inquest on free enterprise."

On December 10, 1962, the Federal Trade Commission ruled that the Borden Company, 350 Madison Avenue, New York City, had engaged in unlawful price discrimination by charging substantially higher prices for its "Borden" label evaporated milk than for milk of like grade and quality sold under its private labels. (FTC Docket No. 7129).

Borden is engaged in the manufacture, processing, distribution and sale of an extensive variety of food, dairy and chemical products in the United States and abroad. Its total sales in 1967 amounted to \$931,220,662.

The unlawful activities of Borden severely injured Dairyland Cooperative and other mid-West competitors. TopCo, the chain store buying organization, was one of the beneficiaries of the price discriminations. Competitors of Borden lost sales of about 250,000 canned milk cases of business during a 2-year period. Apparently, Borden drove many of its competitors completely out of the canned milk business.

On April 22, 1964, the Borden Company because of its violation of anti-Trust laws and to prevent prosecution, consented to a Federal Trade Commission Order forbidding it to acquire any domestic manufacturer, processor, or seller of certain dairy products without prior approval of the FTC for the next 10 years. (FTC Consent Order No. 6652). Borden was ordered to sell 8 firms it had acquired in violation of the law. Borden had been charged with violations of both Section 7 of the Clayton Act and Section 5 of the Trade Commission Act, which broadly prohibits unfair competitive activity.

#### FOREMOST

On May 23, 1963 Foremost Dairies, Inc., was ordered to stop discriminating in price, which substantially injured competition. (FTC Docket No. 7475). Foremost Dairies is a New York Corporation which sells fluid milk and other dairy products throughout the United States. In 1960 its sales were \$437,706,220. It owned on June 30, 1959, fifty-nine processing plants located in 24 states.

#### THE CASE OF MILK KICKBACKS IN PITTSBURGH

A widespread conspiracy in violation of the U.S. anti-trust laws and the Pennsylvania milk control law was recently uncovered by the Bureau of Internal Revenue. (See Pittsburgh Press Feb. 7, 1965.) This conspiracy, resulting in the cheating of farmers and consumers of millions of dollars, was effectuated by a widespread system of kickbacks and rebates.

Two of the dairies involved have been prosecuted for tax evasion, and others may be involved. The kickbacks, which result in higher consumer prices, were made without the knowledge of farmer members of the cooperative. In some instances milk was sold outside the State of Pennsylvania at low prices and brought back in the State and sold at high prices. There is a tremendous spread between what the producers get and what the consumers pay in Pennsylvania. Milk in Pennsylvania sells for 51¢ a half gallon and in other areas as low as 38¢. In some instances milk sales in other states and its return sale in Pennsylvania was entirely fictitious. The milk was not moved at all, although a mythical transaction was recorded on the books.

#### BREAD

The Federal Trade Commission on December 15, 1964, denied a petition of the Continental Baking Company of Seattle, Washington, that the Commission reconsider its decision and Order of Feb. 28, 1964, prohibiting Continental Baking Company and others from fixing bread prices. (Docket No. 8309.) The headquarters of the Continental Baking Company is in Rye, N.Y. It owns and operates more than 60 bakeries in 29 states and the District of Columbia. It had sales of \$350 million in 1960, and 27,000 employees. Also charged with conspiring to fix prices was *Safeway Stores, Inc.*, with headquarters in Oakland, California. Safeway operates some 2,000 grocery stores in 28 states. In 1960 it had more than 63,500 employees and sales of \$2,468,000,000.

Meanwhile, bread prices in the U.S. have risen 63% since the 1947-49 period. The wheat farmer's share of the 1-pound loaf now selling for about 21¢ has dropped from 2.7¢ to 2.5¢ during the same period.

#### WARD BAKERY PRODUCTS

In an undated complaint, Ward Baking Company and others were charged by the Department of Justice in the U.S. District Court, Southern District of Florida, Jacksonville Division, with conspiring and agreeing to defraud and injure the United States beginning as early as 1957, by obtaining or aiding in the payment of false, fraudulent and fictitious claims under contracts

awarded them for the sale of baking products. In furtherance of the conspiracy, the defendants allocated among themselves the business of supplying bakery products to the United States Naval installations in the Jacksonville area, and submitted non-competitive, collusive, and rigged bids and price quotations for supplying the Naval installations.

Representatives of the defendants held meetings and conferred by telephone in furtherance of the conspiracy. Allocations were made so as to provide each defendant with business for a designated quarterly period of the year. Agreements were made by defendants to rig high prices so that the designated person would be awarded the contract. As a result of the conspiracy the United States was compelled to pay higher prices for bakery products than if competition had not been destroyed.

#### THE CHAINSTORES

##### *Safeway*

On December 31, 1959, Safeway Stores, Inc., and others were charged by the Department of Justice with violation of the Sherman Act, which prohibits conspiracies and monopolistic acts. The co-conspirators, according to the complaint, had engaged over a period of years in a "combination and conspiracy to establish, maintain and stabilize arbitrary and non-competitive prices, terms and conditions for the sale of groceries to consumers in the San Diego (California) area in unreasonable restraint of . . . commerce."

The conspiracy included agreements: to not advertise groceries at less than the agreed-on prices; to induce suppliers to cooperate in enforcing such minimum prices; to induce and coerce retail grocers to adhere to such minimum prices; to threaten grocers that failure to maintain prices would involve such grocers in price wars, and to falsely represent that California law prohibits sales below cost even where there is no intent to injure or destroy competition.

The result of the conspiracy was to destroy competition and to exact arbitrary charges from consumers in excess of \$500,000 a year of that which they would have paid for groceries had free competition existed.

##### *A & P*

On March 15, 1963, a grand jury charged in a criminal proceeding in the United States District Court of Massachusetts that the Great Atlantic and Pacific Company had engaged in a combination and restraint of trade in violation of Section I of the Sherman Act with H. P. Hood and Sons, and that A & P had made an illegal agreement with Hood that A & P would *sell milk to consumers* in the Greater Boston Area at prices set by Hood; that Hood would *set the prices at which A & P would sell milk to consumers* in the Greater Boston Area at levels designed to eliminate the sale of milk by jug handlers in said area; that Hood would attempt to coerce, persuade and induce jug handlers to raise their milk prices to consumers in the Greater Boston Area.

The indictment also charged A & P guilty of price discrimination which was carried out by means of a secret agreement whereby Hood agreed to pay secret rebates on all purchases of milk by A & P in consideration of A & P continuing to purchase milk from Hood. The secret agreement discriminated against competitors of A & P and Hood in that such rebates were not available to such competitors. Such rebates, the Grand Jury charged, were in violation of the Robinson-Patman Act.

#### RECOMMENDATIONS

1. We urge a Truth in Packaging Bill with enforceable governmental standards on weight, sizes and label information including clear weights and measures shown on the label.
2. Misleading qualifying words of quantity or size should be eliminated.
3. We plead that packaged meats be included, as these packages are among the worse offenders.
4. Cents off should be prohibited.
5. Sizes and servings should be standardized and enforced.



6. We support Congressman Stalbaum's proposal to include truth in lending advertisements and contracts.

7. We urge prompt action now by your Committee of this legislation as we know the opposition hopes to defeat or water down the legislation by delay.

Why haven't we heard more about these matters in the mass media?

[In million of dollars]

	Yearly advertising expenditures
General Foods.....	101
Procter & Gamble.....	189
Lever Bros.....	81
National Dairy.....	53
Colgate-Palmolive.....	70
Coca-Cola.....	41
Campbell.....	37
Kellogg.....	34
Corn Products.....	33
General Mills.....	32
National Biscuit.....	33
Pillsbury.....	27
Borden's.....	24

The 1964 advertising expenditures by corporations marketing food and kindred products:

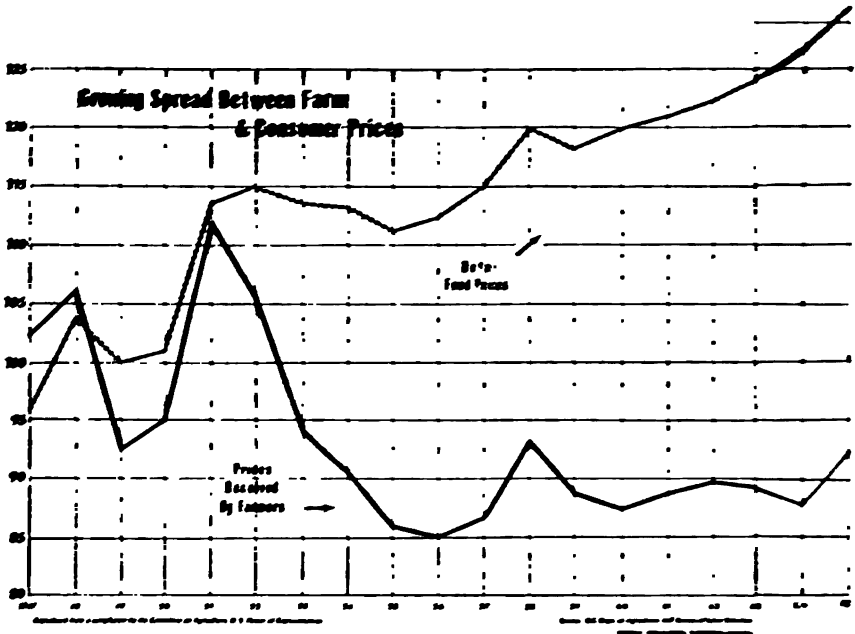
Manufacturing.....	\$1,389,800,000
Wholesaling.....	108,600,000
Retailer.....	673,200,000

Total..... 2,171,600,000

Source: 1964-5 Food Industry Yearbook; Marketing and Transportation August 1965.

	1964 net profits in millions of dollars	Return (net profit) on invested capital (percent)
General Foods.....	84	17.1
Coca-Cola.....	65	19.3
National Dairy Products.....	64	11.8
A & P.....	52	9.0
Safeway.....	50	14.7
Corn Products.....	49	14.5
Campbell Soup.....	48	12.8
Borden's.....	45	10.6
National Biscuit.....	36	16.8
Krogers.....	28	11.9
Ralston Purina.....	24	11.0
Armour.....	23	9.8
Win-Dixie Food Stores.....	20	21.3
California Packing.....	18	9.9
Allied Stores.....	18	7.9
Carnation.....	16	11.6
Heinz.....	15	7.5
Beatrice Foods.....	15	10.4
Consolidation Foods.....	14	11.5
Jewel Tea.....	13	12.1
Acme Market.....	13	8.4
National Tea.....	11	8.9
Food Fair Stores.....	10	10.4
Hunt Food.....	10	4.8

Source: Fortune magazine.



**The Committee on Agriculture, U.S. House of Representatives Reports:**

"Retail food prices have increased 39 percent in the past 16 years. Prices received by farmers have declined 72 percent."

"Last year the cost to consumers of farm-produced food totaled \$67.9 billion - up \$26.2 billion, or 64 percent, from

the 1947-49 average of \$41.7 billion; and that, of this \$26.2 billion increase in the cost of farm-produced foods, \$23.2 billion, or 68.5 percent, was absorbed by marketing agencies and processors - the middlemen. Only \$3.0 billion, or 11.5 percent, trickled back to the farmer."

Company	1963				1964			
	Sales †	Gross profit ‡	Net profit §	Net profit stockholders equity (percent)	Sales †	Gross profit ‡	Net profit §	Net profit stockholders equity (percent)
Armour.....	\$1,810.6	\$29.6	\$16.3	7.5	\$1,887.0	\$38.4	\$22.7	17.2
John Morrell.....	2,613.4	4.6	2.5	6.3	2,655.7	8.5	4.7	8.8
Swift.....	2,473.5	31.5	17.1	4.3	2,610.1	42.5	25.1	6.1
Wilson.....	5,700.1	15.0	7.3	7.3	5,703.3	25.1	12.6	13.3
A & P.....	5,810.5	126.2	60.2	10.8	5,189.2	105.0	57.5	10.3
Kroger.....	2,102.1	45.1	22.1	9.8	2,327.6	54.4	27.9	11.9
National Tea.....	1,055.9	19.0	9.2	7.9	1,123.0	—	—	—
Saleway.....	2,649.7	94.7	44.8	14.2	2,817.6	(*)	50.0	—
Winn-Dixie.....	2,531.3	37.8	18.7	20.9	2,871.8	—	20.4	21.3
Acme.....	1,081.1	27.1	13.1	9.4	1,118.7	—	13.6	9.1
Food Fair †.....	1,003.3	22.3	10.4	11.1	1,105.4	14.7	7.3	7.5

† Millions.

‡ National Tea 40 weeks Oct. 3, 1964.

§ Not available.

\* Food Fair Stockholder's equity as of Apr. 27, 1963, and May 2, 1964, respectively.

Source: Moody's Industrials and other financial reports.

## STATEMENT OF EDWIN CHRISTIANSON, PRESIDENT OF MINNESOTA FARMERS UNION

Minnesota Farmers Union strongly supports the enactment of fair packaging and labelling legislation.

We do so on the basis that confusing pricing and packaging practices cause a depletion of purchasing power which farmers and other consumers can ill afford.

It is regrettable that the income gains being made by farmers are in part being dissipated by various forms of economic waste.

We do not believe that any legitimate manufacturer or retailer will be injured by the regulations contemplated in this legislation; in truth, we expect that the honest merchant and manufacturer will be helped because he will be spared from undesirable and destructive competitive practices by less scrupulous operators.

We understand that you have before this committee, both the Senate-approved Hart bill, S. 985, and the Staggers bill, H.R. 15440. We urge that this committee give due consideration to the best provisions of each bill and that it make an early decision recommending a bill so that action can be completed in this session.

## STATEMENT OF NEW YORK STATE ATTORNEY GENERAL LOUIS J. LEFKOWITZ

I wish to thank the Committee for allowing me to express my views on the pending measure, Senate Bill 985 (Report No. 1186) referred to as the "Fair Packaging and Labeling Act" which, in broad terms, seeks to require the labeling of containers in such a way that the buyer could easily determine the weight or volume of the contents and compare the value with that of competitive products.

I have urged during recent years passage of such a bill as the "truth in packaging" act since truth in the marketplace is shockingly absent in the dealings of a fringe element of business with the consumer. While aiding the all too often unwary consumer the bill would also enable producers to compete on the quality and price of their products and the attractiveness of their presentation, rather than irrelevant packaging gimmicks.

The great majority of our business people do carry on with full regard for the men and women with whom they deal. But an unscrupulous segment, small but significant, persists in attempts to take money from the public without regard to integrity and ethics.

Such practices drain millions of dollars from the consumer's purse each year. By devious methods the fringe element gains an unfair advantage and does incalculable harm to the legitimate business man. Public faith and confidence is undermined by the unfair methods of the few, inflationary pressures are created, and our entire economy is caused to suffer.

Modern-day advances in the development of home improvements and appliances, the increasing number of gadgets and gimmicks that attract the consumer's dollar and the general promotion of new products for the householder have opened new fields for the white collar bandit.

We are living in a gadget age that has seen the development of many new devices to make more comfortable and pleasant and increased leisure time available to many Americans. But unfortunately, the cost of upkeep and maintenance together with the complexity of the products themselves has added to the financial burden of the average householder. Some might say that it is not outer space that perplexes him, but the sales barrage on this planet that has him spinning.

The consumer is turning desperately to government for protection and relief from the scores of business cheats that continue to victimize him.

The entire concept of caveat emptor has undergone a radical change as the result of the passage of new laws for greater protection of the consumer, the investor and the legitimate businessman.

Protection from some business frauds cannot be afforded except by government intervention. The complexities of modern life make it impossible for the average purchaser of goods or services to research the quality, design, and cost of things he buys and to make an adequate determination of whether or not he is getting his money's worth.

For his own protection the consumer must look to the government for help but he must not seek to throw off the responsibility for self-discipline and alertness to the possibility of fraud.

The State of New York has taken dynamic and effective steps, both by way of legislative enactment and the strengthening of the hands of enforcement and administration agencies, to insure that the consumer is given a fair deal.

State efforts, no matter how laudable and successful they may be, cannot provide all the answers. In many cases we face the limitation of State boundaries. The very nature of business activity today inevitably involves commerce across State lines, thus often thwarting State protective programs.

The key to ultimate success lies in a coordinated effort between the businessman and the consumer working together and in cooperation with government agencies to close the doors to those who seek an open season on the consumer's dollar.

---

STATEMENT OF THE AMERICAN TRIAL LAWYERS ASSOCIATION, PRESENTED BY  
THEODORE I. KOSKOFF OF BRIDGEPORT, CONN., NATIONAL LEGISLATIVE CHAIRMAN

The American Trial Lawyers Association strongly recommends the passage of H.R. 15440. This legislation is important to all Americans as consumers.

The prepackaging revolution of the past two decades has seen the supermarket replace the neighborhood grocery store; the package replaces the brown paper bag; the approximate 8,000 items on the store shelves replace the 1,500 available after World War II.

Passing down the modern supermarket aisle, the consumer-buyer is confronted not by a seller, but by rows of packages and cans, each an inanimate salesman, carrying a message from a remote manufacturer.

The package has, in effect, replaced the live salesman. It is with the unfair practices arising from the package's salesman role that this bill is concerned.

Bills, S. 985 and H.R. 15440, would require regulations to insure that labels of packaged consumer commodities bear adequate information as to contents of the packages. This information would include identity of the commodity and its manufacturer, and a statement of net quantity of contents expressed in ounces or fractions thereof, or in whole units of pounds, pints, or quarts.

This net quantity statement would be required to be printed in a prominent and uniform manner as to type, size and location on the label, and could not be qualified by descriptive words or phrases. However, non-deceptive descriptions would be permitted elsewhere on the label.

The bill also provides for exceptions to the mandatory regulations to cover those situations where compliance either is impracticable or unnecessary for consumer protection.

In addition to the mandatory regulations, which apply to all consumer commodities, S. 985 also provides discretionary authority for regulations on a commodity-by-commodity basis. These regulations would be promulgated when necessary to prevent deception or to facilitate price comparisons. They would concern statements of ingredients, cents-off sales, standards defining size, descriptions relating to quantity such as "small," "medium", or "large", and serving standards.

The Fair Packaging and Labeling Act, which is intended to aid the consumer, should also work to the advantage of the manufacturer, for it would make his production costs cheaper, not costlier, as critics of this legislation say. It would permit the legitimate businessman to compete with his less ethical brother.

Congress can no longer permit the continuance of marketing practices on the part of a few practices—which constitute near deception, confusion, shabby merchandising practices and a continual con-game aimed at the pocketbook of the American Housewife.

One of the objections to the legislation is the claim that it will result in a bureaucratic standardization of packaging of the "size and weight in which commodities will be packaged or bottled." This, of course, is not so.

Efforts to get a basis of comparison and some voluntary standardization by packaging was attempted by the late president, Herbert Hoover. As stated in the report of the Senate Committee on its similar bill (S. 985—Report #1186, May 25, 1966 at page 3).

"The committee was much impressed with the opportunities for cooperative voluntary standardization inherent in the voluntary standards procedures of the Department of Commerce. The Department's voluntary standardization program was established by former President Herbert Hoover in 1926 in his then capacity as Secretary of Commerce. The Department has since participated in the establishment, through industry cooperation, of some 500 standards. The voluntary standardization of can sizes through the Department's procedure is

probably the outstanding instances of such cooperative effort involving consumer commodities.

"The uniform marketing of liquor in pints, fifths, and quarts also supplied the committee with a concrete example of weight standardization which has apparently not inhibited innovation in the design of attractive and imaginative bottles of widely varying shapes, sizes, and dimensions."

Another objection to the legislation is a claim that it is superfluous and that present laws have been inadequately enforced. In testimony before the Senate Committee on April 29, 1965 during a hearing on S-965 the Hon. Paul Rand Dixon, Chairman of the Federal Trade Commission, said:

"The Federal Trade Commission is in full accord with the purposes and objectives of this bill. The present law is directed toward the prevention of 'unfair methods of competition' and 'unfair or deceptive acts or practices.' In the absence of fairness or deception, the Commission is not presently authorized to take action which would assure consumers of being provided with sufficient information upon which to make meaningful comparison of goods in the marketplace.

"Moreover, this is an area in which the forces of competition may not always provide a sufficient safeguard for the consumer's interest. Actually, present laws on this subject do not have sufficient teeth in them to guarantee compliance and the enforceability of the proposed legislation is left only to cease and desist orders and injunctive relief. This is the mildest type of enforcement provision."

Another claim made by the opponents of this legislation is that too much power will be vested in the agencies involved—power which may ultimately be abused. Of course, the obvious answer to this is the protection afforded by the Administrative Procedures Act. (Fed. Code Ann. Title 5, Section 1001 et seq.) This act has a number of *safeguards against abuses* among which are:

1. Notice of proposed rule published in the Federal Register.
2. Interested people are allowed to participate by rendering their opinions, objections, suggestions, etc.
3. Party violating rule is entitled to a trial-type hearing.
4. Judicial review for abuse of administrative discretion.

The American free enterprise system depends on a marketplace in which price comparisons can be readily and easily made between competing products. Only in this way can the consumer have a voice in steering toward a socially desirable goal of the greatest good for the greatest number. This is the American way of life.

When the buyer's ability to exercise a rational choice is inhibited, the people's economic directional sense becomes confused. The threat of waste and malpractice looms larger. Thus, when a buyer cannot, or does not have the opportunity to make such an informed choice—as happens when the practices described occur—when he pays more than he needs; when he chooses the worst, not the better part, the efficient producer is punished and the inefficient is rewarded.

Certainly, if consumers are unable to compare prices, competition can exert no discipline on rivals to meet the lower prices of competitors. Thus, competition provides no inducement to rivals to seek consumer favor through price reductions and the consumers are economically cheated.

We have reached a point now when the concept of safety and efficacy in respect to food and drugs has been firmly embedded by Congress in law and accepted by our society. We have not yet fully developed the concept of "truth" in packaging and distribution of these commodities.

In the area of consumer health and safety, the courts have decreed that the old doctrine of "buyer beware" be replaced with "seller beware." In sales promotion and merchandising, the "buyer beware" doctrine still prevails in many cases. But courts, however, are taking increased notice of deceptive advertising in food and drugs. However, existing law and existing rulemaking authority are not adequate to update packaging and labeling regulations in the light of dramatic changes in technology and marketing practices. Just as the small grocery store, manned by salesmen-clerks, is being supplanted by the huge self-service supermarket, so must existing practices be supplanted by new consumer-interest measures.

The American Trial Lawyers Association with its 25,000 members in 70 affiliates and branches supports this legislation because:

1. Consumers, our clients, need your help.
2. The ATL bar association has traditionally been known as the "People's Advocate."

3. ATL believes the law should be progressive and dynamic—a changing law . . . responsive to human needs. These needs vary as social changes respond to technological and scientific advances.

4. The American consumer and his family must be protected against dangerous products and faulty design, as well as harmful drugs and medicine—to make the product's guarantee or warranty live up to what it says.

Over the last thirty years, mainly through the efforts of the 25,000 member American Trial Lawyers, our country has taken a giant step forward in eliminating deceptive sales techniques and vocabulary from the American Business scene.

This has been accomplished through changes in the law of "warranty" designed to hold the manufacturer to the claims he make about his products.

Today the manufacturer is obliged to live up to the advertising claims of his products as to workmanship, fitness for use, merchantability and design. To do less he must suffer the consequences of the law based on a breach of these claims to an unsuspecting public.

And so at least where the safety, merchantability, use, workmanship and design of a product are concerned, sales talk and advertising that cannot be backed up by performance have substantially left the American scene.

Logically it follows therefore, that the American Trial Lawyers Association endorse and support this type of legislation designed to prevent "unfair," "near-deceptive" marketing practices that make it virtually impossible for the American housewife to compare products as to price, quantity and quality in the daily marketplace.

Because we believe so strongly in the protection of consumer's rights in the marketplace—including the precious right to be fully informed, as well as the right to health and safety—we endorse H.R. 15440 and urge prompt passage of this legislation.

---

#### STATEMENT OF THE COMMITTEE ON TRADE REGULATION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

The Committee on Trade Regulation of the Association of the Bar of the City of New York submits this Report on H.R. 15440 which has been proposed to the House of Representatives of the United States. A counterpart to this Bill, S. 985, has been passed by the Senate of the United States. The proposed law is entitled the "Fair Packaging and Labeling Act". It would regulate the labeling and packaging of consumer commodities sold in interstate and foreign commerce, primarily for the purpose of simplifying price comparison among competing products and package sizes by among other things requiring adequate quantity and composition disclosure on the commodities covered by the Act.

This Committee supports the passage of such a bill if it were modified as stated in this Report, because the Committee believes the informative labeling which would be required by this statute to be in the public interest.

#### DISCUSSION

In the last several years legislation popularly known as "Truth in Packaging" bills has been introduced in both houses of Congress. The impetus for this legislation has been the revolution in the marketing of consumer commodities as reflected in the rise of the supermarket.

The Senate Committee on Interstate and Foreign Commerce, in passing its version of this bill, concluded that the labeling content on an individual package as displayed on the supermarket shelf has taken the place of the store clerk in providing the consumer with such necessary product information as will enable him to make a choice between competing products. The number of packages in which consumer commodities are sold have increased greatly in the past 20 years. Presently, manufacturers use many and varied measures to state the quantity contained in each package of their products. Many manufacturers other than those of foods and drugs do not include a statement of the product composition on their packages. This has confused the buying public and has made intelligent comparison among competing products and packages a difficult task. It was felt that this situation called for remedial legislation which would give the consumer a fair and rational basis for selecting among competing brands and sizes of consumer commodities.

This Committee believes these conclusions to be generally well founded. Therefore, we support passage of this bill by the House with the modifications set forth below.

**WE PROPOSE THE FOLLOWING MODIFICATIONS**

We believe H.R. 15440 can be strengthened and clarified. We recommend that the Committee on Interstate and Foreign Commerce report out to the House of Representatives a statute embodying the changes set forth below.

1. We suggest that Section 3 of the bill entitled, "Prohibition of Unfair and Deceptive Packaging and Labeling" be revised as follows:

"Sec. 3. It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person who prescribes or specifies by any means the manner in which such commodities are packaged or labeled, to distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Act and of regulations promulgated under the authority of this Act."

The Committee believes that the recommended revision of Sec. 3 makes that section more easily understood by the elimination of unnecessary particularization.

2. We suggest that Section 4 of the bill, entitled "Requirements and Prohibitions", Subsection (3) (A), be revised as follows:

"(3) The separate label statement of such quantity of contents appearing upon or affixed to any package—

(A) if expressed in terms of weight or fluid volume, on any package for a consumer commodity containing four pounds or less or one gallon or less, shall be expressed in ounces (avoirdupois or liquid, whichever may be appropriate)."

In the opinion of this Committee, the purpose of this legislation will be frustrated by the labeling of packages in ounces and whole units of pounds, pints or quarts. As the bill has been drafted it is not clear, but a package could be labeled as containing, for instance, one pint. Another package could be labeled as containing 18 ounces. Thus price comparison would still require the conversion of pints to ounces in order for an intelligent choice to be made. We believe that the purposes of this statute would be best promoted by requiring a standard label in ounces of quantities four pounds or less, or one gallon or less.

3. We believe Section 5 of the bill, entitled, "Additional Regulations" to be consistent with the purpose of the statute. However, we recommend that Subsection (c) (3), which prohibits certain forms of pre-ticketing, be omitted from the Act. This provision may eliminate a measure of the price competition among retailers, which competition is a benefit to the consumer. Furthermore, the Federal Trade Commission has ample authority under Section 5 of the Federal Trade Commission Act and under its body of case law to prevent any abuse.

We believe that Subsections (d), (e), and (f) of Section 5 should also be deleted from the statute. It is the opinion of the Committee that the matters covered by these subsections will not assist the consumer further in making comparisons among competitive products if these products are clearly labeled in accordance with the other provisions of the Act. We believe that the establishment of weight or quantity restrictions are unnecessary and detrimental to the public interest and free competition by limiting the choice open to consumers and businesses. We believe that there is no need to regulate packaging sizes or to standardize them if packages are labeled in accordance with the statute. We further believe that reference to the Commerce Department procedure for voluntary product standardization is unnecessary because it is available under existing law.

4. We suggest that Section 8 of the bill entitled, "Reports to the Congress" be revised to eliminate reference to voluntary product standards so as to conform with our revision, as follows:

"Section 8—Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year."



## CONCLUSIONS

We support passage of the bill before the Committee with the modifications outlined above.

July 26, 1966.

## STATEMENT OF HILLS BROS. COFFEE, INC.

Hills Bros. Coffee, Inc. is a manufacturer of coffee exclusively, in both ground and instant form. We distribute our products regionally, and our major competition stems largely from companies with national distribution. Our business is principally in two consumer products sold through grocery stores as branded merchandise, Hills Bros. Coffee and Instant Hills Bros. Coffee. Therefore, we can be characterized as a small consumer goods manufacturer which has been able to compete successfully against much larger and diversified manufacturers in the American system of free enterprise.

We strongly oppose most of the provisions contained in H.R. 15440, and we wish this to be known as a matter of record in connection with the public hearings on this proposed legislation before the Interstate and Foreign Commerce Committee of the House of Representatives.

We are most deeply concerned about those provisions of the legislation which would give the Federal Trade Commission and the Secretary of Health, Education and Welfare, depending upon the product involved, the authority to establish regulations prescribing conditions under which price reduction offers could be indicated on product labels, and the authority to promulgate regulations regarding the size and weight in which commodities shall be packaged. We believe it is dangerous to give these government bodies the arbitrary power to impose regulations which could interfere significantly with our proven free enterprise system.

As a small regional manufacturer, we believe that our ability to use "cents off" promotions freely and at our discretion is essential in order for us to compete effectively with larger and widely diversified manufacturers who are competing against us in the coffee industry.

Additionally, it is clearly unwise and unnecessary to consider giving government bodies the authority to dictate the quantities and sizes in which a manufacturer must package his commodities. On the one hand, this would empower a Federal Agency to enforce package size changes on various industries which could result in massive machinery changes, and necessarily involve manufacturing costs that the consumer would ultimately have to bear. It would also prevent a company such as ours from offering the consumer new and distinctive package sizes which the consumer might find preferable to existing sizes. On the other hand, there is no clear indication that placing such authority in the hands of a Federal Agency will benefit the consumer.

In addition to the above provisions of H.R. 15440 to which we strenuously object, we also object to another provision which we consider to be unnecessary in view of the fact that adequate statutes already exist relative to this provision. Here we refer to the provision regarding qualifying words or phrases appearing in conjunction with the statement of net quantity of contents. There is clear evidence that Federal bodies already have adequate regulatory powers to prevent manufacturers from using such deceptive words and phrases if they are deceptive, and indeed they have used these powers.

It has been our experience that consumers are acutely discerning as to the ability of products to satisfy their needs. They have also demonstrated to us their awareness of price and their ability to relate product value to product cost. Therefore, we firmly believe that the sponsors of this legislation have both erroneously evaluated the consumer's need for greater protection and also have gone much too far in prescribing additional legislation. With the exception of the sound provisions in the legislation calling for clarity in the statement of package contents, this legislation will provide unjustified restraint on industry without commensurate value to the consumer—and, in fact, can precipitate Federal interferences in the marketplace which will create unnecessary marketing inefficiencies and resultant increases in consumer prices.

We urge the Interstate and Foreign Commerce Committee of the House of Representatives to conclude that H.R. 15440 should be abandoned in favor of legislation which will provide for clear identity of product, name and place of

business of the manufacturer, and net quantity of contents, but which will not impose the other unnecessary regulatory aspects of H.R. 15440 on the American economy.

STATEMENT OF HARVEY F. NOSS, EXECUTIVE VICE PRESIDENT, ON BEHALF OF POTATO CHIP INSTITUTE INTERNATIONAL

The Potato Chip Institute International, 940 Hanna Building, Cleveland 15, Ohio, is a trade association of manufacturers of potato chips.

The Institute and its members, in common with numerous other industries, are strongly opposed to H.R. 15440 or similar bills such as S. 985.

We wish to make it clear that, in common with most other industries, we do not oppose plain, legible and honest labeling. We do not oppose requirements for prominently placing required information on the package or label, although we believe such new legislation is unnecessary since these objectives can readily be achieved by enforcement of already existing laws, particularly the Food, Drug and Cosmetic Act and the Federal Trade Commission Act.

What we do most vehemently object to is the proposal to give to an administrator the power and authority to establish standard sizes permitted to be sold and to prohibit the sale of other sizes.

In the consideration of the Senate bill (S. 985) references were repeatedly made to the 71 sizes of packages of potato chips. Senator Neuberger, in the course of the Senate debate, pointed to the fact that the housewife, in selecting potato chips, is confronted with choosing a size from 71 competing sizes. This is far from the fact. The fact is that she has a choice of possibly four to six sizes.

The purpose of this statement is to acquaint the Committee with the facts as to sizes of potato chip packages, the reasons therefor and the difficulties that will be created by any attempt to standardize weights of packages of potato chips.

It should first be noted that most potato chip manufacturers, due to problems in distribution and shelf life, operate on an area basis. The 71 sizes referred to are the total of all sizes in every area of the country. It is absurd to suppose that when a housewife goes into a market, even a large supermarket, to buy a package of potato chips, she finds 71 different sizes lined up on the shelves, from which she must make her choice and her price comparisons. The fact is that even in a large supermarket, she might find one or two brands and possibly four to six sizes from which to make her choice.

It should also be noted that what seems on its face to be a proliferation of sizes has come about for sound reasons and not be mere capriciousness. Potato chips are used by various people in various ways, for various purposes and in varying amounts. The industry supplies varying sizes to meet varying demands. For example, sizes range from the small, individual package which a mother puts in a child's lunch box, to the large tin drum for institutions, restaurants or picnics.

There is the family of one, two, three, four, and up, who may consume potato chips occasionally or who might consume them steadily and substantially. The package size desired by a single individual who occasionally eats potato chips should not be the same as the size for an individual who is a substantial consumer. The same is true right up the scale. A family of six whose members occasionally eat potato chips is not properly served by the package size which serves a family of six who are substantial consumers. Consumer preferences support the various sizes. If a manufacturer puts up a size which the consumer does not want, he will not stay in business long. Sizes are determined, at least in part, by consumer preferences, regionally, and it is the position of the industry that the size preference of an administrator in Washington should not be substituted for the consumer preferences throughout the nation. It is the position of the industry that no administrator should be given the power to decide that a consumer may purchase a two ounce package but shall be prohibited from being supplied with a two-and-one-half ounce package.

This Committee is undoubtedly already familiar with the fact that there are certain prices at which food commodities move freely and others at which they move slowly. There are certain "magic" prices such as 5 cents, 10 cents, 29 cents or 39 cents. This factor also has a two-fold effect on sizes of packages of potato chips.

Suppose, for example, that two manufacturers want to produce a package to sell at retail at 29 cents. One is located in the heart of the potato producing

area in Maine, where potatoes are trucked directly from the field to his factory. The other is located at a point distant from the supply, so that the potatoes must be trucked to the railroad, shipped by rail and reloaded on a truck for delivery to his plant. Even if the basic price of the potatoes is the same to both, the more distant manufacturer winds up with a higher raw material cost. The net result is that the more distant manufacturer may wind up with a slightly smaller package to sell, in his region, at 29 cents, as compared to the package of the manufacturer located in the heart of the potato country. This size difference is economically sound and necessary.

Suppose further that each of these two manufacturers produces packages to sell at 5 cents, 10 cents, 19 cents, 29 cents, 39 cents and 49 cents. In other words, each manufacturer produces six different sizes. For the reasons already shown, it is to be expected that the distant manufacturer's package weights will differ somewhat from the local manufacturer. Thus, just between these two manufacturers, there are twelve different sizes.

Under the circumstances, in an industry whose products run in size from the small individual lunch box package to the institutional or picnic size, it is not surprising that there are 71 different sizes, on an overall national basis. What is surprising, under these circumstances, is that there are *only* 71 sizes.

The "magic" prices also have a second substantial effect on package sizes. Suppose, as is the fact, that a manufacturer gets a good sales volume at 39 cents, but sales would fall substantially if he sold at 41 cents. Suppose then that there is a drastic increase in the price of potatoes, due to a short crop. This is not purely hypothetical. Only a few years ago, potato prices advanced from \$1.50 per hundredweight to \$6.50 per hundredweight and even higher for proper quality, in the course of one season.

This presents a serious problem to a potato chip manufacturer. It is obvious that he can no longer sell the same size at the same price. The normal procedure is to maintain the same "magic" price but to adjust the weight of the package, with the weight printed on the package. Thus, different sizes are again created.

At this point, we would like to put to rest any feeling that there might be that if a manufacturer reduces his size because of an increased potato price, he will keep that smaller package at the same price even when potatoes go down, at the expense of the consumer. This is far from the fact. If a manufacturer attempts to do that, he will soon find that one or more of his competitors will increase his size and take his business away.

It is apparent, then, that potato prices have a direct bearing on package sizes, both with respect to basic potato price fluctuations and with respect to differences in cost between manufacturers in the producing areas and manufacturers at a distance from the source of supply.

All of the above illustrate the reasons for the vehement opposition of the industry to granting power to an administrator to standardize sizes of packages of potato chips. Suppose an administrator establishes standardized sizes which the industry generally tries to sell at one of the "magic" prices. The standardized package size then leaves no room for the difference in cost between the manufacturer in proximity to the production area and the manufacturer at a distance. In addition, standardization of size prevents changes in size to accommodate for wide fluctuation in the cost of potatoes, leaving the only alternative of keeping the same size, but changing from an attractive to an unattractive price.

This is the same problem as encountered in the candy bar industry. If a candy bar is sold nationally at a five cent price, a substantial change in ingredient costs may be accommodated by a variation in weight, while the price remains at five cents, rather than maintaining the same size when cost goes up a half-cent while increasing the price to six cents, which would be both an unattractive price and a detriment to the consumer in paying a larger price increase than necessary.

To summarize, the potato chip industry is strongly opposed to any legislation authorizing administrative standardization of package weights because it opposes the substitution of an administrator's judgment for the preference of consumers; because standardization discriminates between the manufacturers close to and distant from the source of supply, since one may be able to sell a standardized package at a "magic" price and the other may not; and because standardization prevents recognition of raw material cost fluctuations except

by changes in price and such price changes, which must be at least one cent per package at retail, may be more than the adjustment needed and therefore a needless expense to the consumer.

---

STATEMENT OF S. F. RIEPMA, PRESIDENT, NATIONAL ASSOCIATION OF MARGARINE MANUFACTURERS

As President of the National Association of Margarine Manufacturers, I appreciate this opportunity to express its views to this distinguished Committee.

The Committee already has heard much testimony concerning the proposed packaging and labeling legislation embodied in the measures H.R. 15440, S. 985, and other bills. These bills seek to delegate to the Secretary of Health, Education, and Welfare, and to the Federal Trade Commission, broad administrative powers to control packaging and labeling practices involving virtually all "consumer commodities" in commerce.

The National Association of Margarine Manufacturers is a nonprofit trade association organized under the Illinois Not-For-Profit Corporation Act, and composed of most of the margarine producers in the United States.

The proposed legislation has been characterized as a "fair packaging and labeling bill". It is unnecessary to assure your distinguished Committee that this Association is wholly in support of truthful packaging, labeling and wording. I further note that margarine is unique in the number of specific laws, Federal and state, which regulate its labeling. It also specifically is covered by the Model Weights and Measures Law, as enacted in 14 states, by provisions of many other state laws, and by a provision in Federal law controlling retail weight.

Therefore, it would seem justifiable for your Committee to conclude that the margarine industry for all practical purposes is already subject to the proposals in H.R. 15440, S. 985, and similar measures, noting also that margarine with any animal fat is exempt altogether.

Nevertheless, for all its special position under existing laws and regulations, the margarine industry like the rest of the food industry is indeed sharply affected by the proposed legislation. I am particularly referring to the built-in barrier the bill's Section 5 contains to new product innovation and consequent new packaging. The Committee has received excellent testimony concerning problems involved in the proposed standards-making machinery. I wish to devote my testimony to this one important aspect of the proposed legislation.

THE RESTRICTION ON INNOVATION IS A REAL ONE

Like so many foods in today's expanding consumer economy, margarine is constantly undergoing study with a view to creating new consumer services. New margarines have been developed in recent years. They have met with consumer acceptance. They have provided new markets for their farm-produced ingredients.

New packaging has been necessary. Where once this form of food was bought in the familiar rectangular shape, it has been developed into other forms. The now-familiar "eastern flat" and "western flat" cartons were adopted to meet the desirability of a distinctive container for this type of table spread, and to meet regional preferences. Whipped margarine required a larger-sized box than any margarine has previously had, to accommodate its extra volume. Now we have soft margarines, which are proving highly popular, and which must be sold in a tub because they cannot be packaged in the usual wrappers and cartons. Another new form is liquid margarine, which requires a bottle-like closed container to facilitate keeping and pouring.

I personally question whether these new products, necessary to bring the consumer the new margarine products which offer special product features such as better spreadability, lighter texture, and in some instances formulas aimed to meet new nutritional suggestions, would have been realized if either of the proposed measures H.R. 15440 or S. 985 had been law prior to their development. They do not depart from the customary and required weights and labeling. They do not present problems of quality, fill, "confusion", or price comparison. But as departures from the so-called "standard", very traditional forms of table spread packaging—of which the "Elgin" package is the prime example—it is

necessary to ask ourselves if they might not have been denied the approval of the agencies and panels set up by the bills to create standards of containers.

There are two parts to this built-in problem.

The manufacturer with a new product and its necessary and creative new package must consider the very distinct likelihood that it will be required to go through administrative procedure and hearings, possibly duplicative—voluntary and regulatory—before his package, and therefore his product, can be made available. He must consider that the agency or panel given the power to review is in no way undertaking any part of his risk, and may not have the background to understand the product idea back of the package. In this respect a basic marketing policy decision would be given over to the government.

Secondly, he must know that, in the process, his competitors will surely be informed. His competitive advantage will be lost. This is a most serious deterrent to innovation created by the proposed legislation.

The small businessman is discriminated against, for his proportionate risk is greater. Government policy as expressed through the Federal Trade Commission, the Food and Drug Administration, the Department of Commerce, and, particularly, the Small Business Administration is to protect and help small business. The practical restriction on innovation in the proposed bills, which I have sought to illustrate with the margarine example, would accomplish the opposite.

Earlier in the hearings the distinguished Chairman has emphasized correctly that there is no wish to inhibit innovation. Yet the restriction, though implicit, is there. During these hearings it has been forcibly brought to our attention by the gentleman who noted the novelty at any one time of the polyethylene bag for convenient packaging of vegetables; by the distinguished Committee member who alluded to the proposal for a spray container for a cheese product, and by the distinguished Committee member who initially described the margarine "dish" container as a novel idea that might very well have not been realized if the contemplated law had been in effect.

The restriction on incentive I have described may not be intended. But it is real. It is bound to affect the practical decisionmaking that goes with the process of putting a new product before the consumer and new expenditures into this part of our economy. It could be effective in limiting innovation that, actually, is to the benefit of all concerned—consumers, farm producers, distributors, and manufacturers. I urge your Committee, which has carefully sought information on the many implications of these proposals to include in your deliberations a critical review of this harmful aspect. For packaging, which is by no means always patentable, is a significant part of product improvement. Margarine is not the only item for which enterprise in package sizes and shapes is a positive aid in bringing new products into the market, and providing the consumer with new services.

#### RELATED PROBLEMS OF SECTION 5

While this is the central problem, it should be noted that various ambiguities and particularly undesirable aspects of the proposed legislation contribute to it. I respectfully bring to your attention four instances:

(1) *Section 5(e)(5) of H.R. 15440* (but not S. 985) authorizes discretionary regulations to establish standards of package sizes and shapes where a package is found by the appropriate agency to be "likely to deceive retail purchasers". This regulatory authority is completely unnecessary in view of the existence of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1) and Section 403(d) of the Food, Drug, and Cosmetic Act). Section 5 of the Federal Trade Commission Act prohibits any "unfair or deceptive acts or practices in commerce. . . ." Section 403(d) of the FDC Act (21 U.S.C. § 343(d)) considers any food to be misbranded "if its container is so made, formed or filled as to be misleading."

Apart from the lack of need for this regulatory authority, its existence would entail economic costs that would have to be passed on to consumers. The time and cost likely to be involved in obtaining an initial or an amended voluntary standard, or a mandatory standard, or a voluntary standard which became mandatory, is bound to be considerable. And the delay and cost inevitably would restrict the ability of the margarine or any other industry to continue to create new packaging to handle new product innovations.

Small businesses might well find these adverse factors sufficient to bar their making such innovations. The cost of new packaging—a major area of effective

competition for small companies as well as large—would very possibly become prohibitive for many firms. The margarine industry includes small as well as medium-size and larger firms.

(2) *Effects of "voluntary standards" not made clear.*—I am unable to determine, with certainty, whether the "voluntary standards" provided by Section 5(e) of both H.R. 15440 and S. 985 are to have the force and effect of law. Section 7 provides for the enforcement of any regulations "issued" pursuant to the proposed legislation. However, voluntary regulations prepared with the participation of the Secretary of Commerce pursuant to Section 5(e) are to be promulgated pursuant to the established procedure of the Secretary of Commerce for the development of voluntary product standards (15 C.F.R. § 10). The established procedures of the Secretary of Commerce (15 C.F.R. § 10.7(a)) provide:

A standard published by the Department under these procedures is a voluntary standard and thus by itself has no mandatory or legally binding effect. Any person may choose to use or not to use such a standard.

Indicative of the likelihood that the proposed legislation does not intend voluntary standards to be enforceable is the absence from the legislation of any provision directly vesting in the enforcing agencies authority to prosecute violations of voluntary standards.

However, if it is intended that the voluntary standards are to have the force and effect of law, they are objectionable because no procedural safeguards are provided to protect the rights of those who do not agree with any such standard. The voluntary standards are not made subject to Section 7 of the Administrative Procedure Act or any equivalent procedural due process.

(3) *Concurrent "voluntary" and mandatory standards proceedings are possible.*—The "voluntary" standard procedure of Section 5(e) contemplates that after the initiation by the appropriate agency of a mandatory standard proceeding, affected industry may initiate a voluntary standard under the auspices of the Secretary of Commerce. However, assuming that the voluntary standard proceeding progresses, the proposed legislation provides no mechanism to prevent the initiating agency (FDA or FTC) from continuing with their mandatory standard proceeding.

If the mandatory standard proceeding is not automatically to be stayed by the initiation of a voluntary standard proceeding, affected industry will be placed in the absurd position of having to proceed with two concurrent proceedings concerned with the same commodity.

(4) *Conversion of "voluntary standards" to mandatory standards not clarified.*—The Senate Commerce Committee's Report on S. 985 advises that (p. 8):

Where a voluntary standard promulgated by the Secretary of Commerce is in effect but is not being complied with, the promulgating authority may initiate a proceeding to establish a mandatory standard.

If our evaluation of the voluntary standard procedure is accurate, i.e., such standards are not legally enforceable, it appears that voluntary standards could be adopted by the appropriate agency as mandatory standards. The proposed legislation does not specifically provide for this procedure, nor does it prohibit it. And the proposed legislation contains no provision prohibiting the authorized agencies from promulgating, as a mandatory standard, any voluntary standard notwithstanding the fact that the affected industry is complying with such voluntary standard.

If one assumes that each voluntary standard will be adopted as a mandatory standard, the affected industry in each instance will be subjected to the cost inherent in participating in two proceedings to result in one regulation:

(a) Under the procedures adopted by Section 5(e), industry participating in a voluntary standard would bear the costs inherent in that procedure. If the appropriate agency then determines to adopt such "voluntary" standard as a "mandatory" standard, Section 6 of the proposed legislation appears to require that the authorized agency promulgate the regulations after a proceeding conducted pursuant to subsections (e), (f), and (g) of Section 701 of the Federal Food, Drug, and Cosmetic Act.

(b) The same duplicate procedure would seem to be required of an affected industry whenever an amendment is sought to be made to a "voluntary" standard. It appears necessary that the affected industry seek to obtain a desired amendment pursuant to the procedure established by the Secretary of Commerce

and, if such "voluntary" standard has been adopted as a mandatory standard by the appropriate agency, affected industry must then participate pursuant to Section 701 of the Federal Food, Drug and Cosmetic Act.

It is not unreasonable to anticipate that the adoption or amendment of any "voluntary" standard which is converted to a mandatory standard would require a minimum of two years' time, and consequent considerable expense.

To sum up, the standards procedures will entail for the manufacturer serious considerations of delay, expense, and disclosure of trade secrets that will operate to discourage and hamper the innovation in the packaging of margarine and other products. This is bound to be a factor working against the consumer's freedom of choice, and the maintenance of the lowest possible cost.

#### CONFLICT WITH EXISTING STATE LAWS

Regulations promulgated under authority of the proposed legislation will create substantial conflicts with established regulation of margarine, at both the Federal and state levels.

This possibility of conflict is increased by virtue of the fact that, for the most part, state regulation of margarine packaging and labeling, over the years, has been modified to eliminate conflicts with Federal regulation of margarine packaging and labeling. The Model Law on Weights and Measures, being progressively adopted by the states, specifically provides for margarine to be sold at retail only in 1 pound  $\frac{1}{2}$  pound,  $\frac{3}{4}$  pound, and multiples of 1 pound.

Regulations promulgated pursuant to the proposed law may, through more careful liaison between the regulating agencies than the bills require, eliminate conflict at the Federal level. In their present form, however, the bills provide no means for eliminating conflict between Federal and state regulations except only in respect of Federal regulations dealing with the labeling of the net quantity of contents of packages. The bills provide that regulations in this limited area will simply supersede state laws concerned with the same subject.

This Association's efforts to eliminate conflict between state and Federal laws regulating the packaging and labeling of margarine stand to be obliterated by the enactment of new Federal regulations which will necessitate renewed efforts, at the expense of industry (and ultimately, the consumer) to eliminate conflicts between state and Federal regulation in this area.

#### NO SAFEGUARD AGAINST WASTE OF PACKAGING IN CHANGEOVER

Nowhere in the proposed legislation is there a safeguard preventing administrative officials from ignoring or inadequately complying with the intent stated in the report on S. 985 of the Senate Committee on Interstate Commerce (Report No. 1186, 89th Congress, 2nd Session) that "no regulation under the mandatory or discretionary sections . . . should take effect until the manufacturers involved have had full opportunity to effect any necessary packaging or labeling changes and to allow reasonable time for the disposal of existing stocks and inventories".

The potential costs involved in any failure to follow this intent are so substantial that it would seem an essential amendment to the bills to make the specific provision that no regulation produced under the proposed legislation will be effective until time has been allowed to make a changeover without unreasonable waste and loss.

#### RECOMMENDATION

The National Association of Margarine Manufacturers respectfully recommends, in the light of the considerations described in this statement and others received by the Committee, that the proposed legislation not be enacted.

I thank the members of the Committee for their attention and consideration.

---

#### STATEMENT OF WILLIAM C. McCAMANT, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF WHOLESALERS

The National Association of Wholesalers is a federation of fifty-one national commodity line wholesale associations representing over 18,500 wholesale distributor establishments. During this year, over \$190 billion of commodities will reach the business user or consumer through wholesale channels. Not all these products would be defined as "consumer products" by the bill under considera-

tion, such as sales to businesses; food to restaurants; paper to printers; or detergent to hospitals. We have no way of arriving at a sound estimate, but it could well be that over \$95 billion of commodities, which move through wholesale channels, would be defined as "consumer products."

The National Association of Wholesalers is opposed to enactment of S. 985 and similar bills now pending before your Committee.

The Food and Drug Administration and the Federal Trade Commission now have sufficient authority to proceed against that small minority which have used dishonest and deceptive methods of packaging and labeling. The American consumer is now offered the finest, cleanest and most wholesome line of food and drugs at the lowest prices, and the greatest array of sizes and packaging for convenience and ease of purchase. We have followed with great interest the Senate hearings on the bill and believe that the need for legislation has not been demonstrated.

While there are many portions of the bill intended to prevent deception, much of which is already unlawful, the most alarming provisions would authorize the Government agencies to determine the size of the packages, the variety of packaging and drastically limit the ingenuity and resourcefulness of manufacturers and packers.

We support fully the principle that packaging and labeling should be honest and not deceive the customer. This organization has not opposed such legislation where needed to prevent deception. We do, however, see no need for additional legislation because the existing authority now rests with the Federal Trade Commission and the Food and Drug Administration and is ample to prevent the abuses cited. We recommend, therefore, that the Committee take no further action on S. 985 and similar pending bills.

#### THE PROHIBITION CLAUSE

We note that Section 3(a) contains the prohibition against the distribution of packaged commodities which do not conform to the requirements of the Act. Also, we observe that Section 3(b) states:

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

On a careful review of this Section 3(b), we wonder what it means and what the Senate intended it to mean. In its report to the Senate on S. 985 (Report No. 1186), the Senate Committee on Commerce gave no reference to the wholesalers exemption. If the Congress intends to pass legislation which will regulate packaging and labeling, then it would appear that the prohibition should apply only to the person or corporation which does the packaging or labeling. Under Section 3(a), a wholesaler who is engaged in packaging or labeling comes under the prohibition, as do others who do packaging or labeling. Our association believes we can ask for no special exemptions. We do, however, vigorously object to the provision which immediately follows, in Section 3(b) (2) which would bring any distributor, wholesaler or retailer under the prohibition if he were to "prescribe or specify by any means the manner in which such commodities are packaged or labeled." Thus any wholesaler who requests a manufacturer or packer to package a commodity must be an expert in the law and assume the risk for the violation of the law. We do not believe this prohibition is necessary for enforcement, nor do we believe it to be fair and equitable. Further, in other legislation recently approved by this Committee, distributors were not brought under the penalty of law for packaging performed by others.

Let me give you a few examples how this will affect wholesalers. Many commodities are packaged for special events, and special endeavors. A local Lions Club may ask a wholesaler of candy to provide or arrange with a manufacturer or packer, a special package for the candy indicating it is being sold by the Lions Club and the proceeds are to be used to help the blind. Should the retailer, which is the Lions Club in this instance, or the wholesaler be required to be an expert in packaging or labeling law, when the packaging is performed by the manufacturer or packer? Boy Scout troops and other youth organizations engage in the same practice, often dealing through a wholesaler. Certainly, no packer should engage in a packaging operation which violates the law, and



If the specifications for the packaging received from the wholesaler or the Lions Club or Boy Scouts are not in conformance with the law, the packer should not accept the order until modified to meet the packaging requirements of the law. We urge this Committee to place the responsibility on the packager, not on a purchaser, whether the purchaser be a wholesaler or a retailer. Other special packaging and labeling is designed to advertise special places such as resorts, historical sites, etc., the commodity being a souvenir of a visit. This law is entirely too technical and complicated for the responsibility for compliance to be spread to thousands of vendors, not engaged in packaging and labeling, who cannot be expected to develop the expertise necessary to comply with the law.

We note that this Committee recently recommended legislation on motor vehicle safety. Yet there was no provision to apply the penalty of law to a purchaser whose purchasing specification violated the law. The manufacturer simply is not permitted to fill the order until modified to conform to the law. We believe that Section 3(b)(2) should be deleted from S. 985, if it is to be enacted.

We can see no need for the law to apply to distributors beyond those who engage in packaging and labeling. Attention is called to the opening sentence of Section 3, "It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined by this Act) for distribution in commerce . . ." This clause is all inclusive and covers all those who engage in packaging or labeling to meet specifications received from wholesalers or retailers.

It should not be the responsibility of the wholesaler who has no assembly line type scales to check the correct weight on each package and no expertise in the field of labeling law to check compliance with his specifications if lawful. The packer is the expert, doing similar packaging for hundreds of purchasers. He is the one engaged in the business of packaging and labeling, not the wholesaler who is requesting a special package or label. The person engaged in the packaging and labeling business should be the one held responsible and would be under Section 3(a).

Accordingly, we urge the Committee to delete in its entirety Section 3(b)(2) from S. 985.

---

STATEMENT OF DWIGHT C. REED, ASSISTANT EXECUTIVE VICE PRESIDENT,  
AMERICAN BOTTLERS OF CARBONATED BEVERAGES

My name is Dwight C. Reed, Assistant Executive Vice President of the American Bottlers of Carbonated Beverages, the national association of the soft drink industry. Our offices are at 1128 16th Street, N. W., Washington, D.C. The active membership of the association is comprised of 2,404 independent manufacturers who bottle and distribute soft drinks throughout the nation.

We appreciate the opportunity to appear before you today and to bring our views of this proposed legislation to the Committee. We have followed the progress of packaging legislation through the Congress with interest and concern, testifying twice before Senate Committees in opposition to specific parts of the proposal. The Bill passed by the Senate, we feel, represents less of an excursion into industry by the government than its earlier versions, and is improved thereby. Our comment today is directed to HR 15440 which contains certain provisions we would not wish enacted into law.

Most alarming of the provisions of this proposal to the soft drink industry is subsection (c) (5), Section 5, which would invest an agency with the authority to restrict package size, shape, and dimensional proportion on an industry or commodity-wide basis, if unspecified and undefined conditions of deception are thought to be present.

In order that our concern over this provision will not be misconstrued, permit us first to say we do not quarrel with an intent to assure consumers that they are not the victims of deception. We believe consumers have the right to know and manufacturers the obligation to provide honest and conspicuous information as to what product is being offered and in what quantities. We believe manufacturers who engage in deceit, deception or fraudulent misrepresentation should be denied seeking the rewards of the marketplace by such methods. But we frankly believe also, it fundamentally wrong to couple this intent with a punitive pre-emption of legitimate and historical rights of choice of honest manufacturers.

Under the umbrella of that philosophy then, our concern over 5 (c) (5) of H.R. 15440 centers on the grant of discretionary authority to a regulatory agency which first, could seriously affect what we consider our unabused competitive rights; and secondly, because of it giving rise to a system which could place in jeopardy some part—perhaps significant—of the important container dollars invested by our many plants.

We believe such authority, thus bestowed, tempts abuse and indulgence which will operate to the detriment of industry and consumer alike. We believe that the application of this power will predictably settle into policies and standards of interpretation, which will work more to the ease of administration than to the justice of individual case determination. We believe, for instance, administration of this authority will give rise to "per se" concepts of deception, where categories of packaging irrespective of their instant use or nature, will be banned and government will feel—as indeed it already professes to feel—it inconvenient to establish deceit or deception in the affected case. Thus the manufacturer's right to choose a package will be sacrificed in some measure to regulatory procedure. We do not believe we have demonstrated cause warranting such erosion of our packaging prerogatives.

We base these views on the remarks of government witnesses who have testified in support of this legislation. For example appearing before the Senate Subcommittee on Anti-trust and Monopoly, the Food and Drug Administration in the personage of its then Commissioner, Mr. George P. Larrick, speaking of current law, said:

"We have to proceed on a case by case basis, which is time consuming."

Further,

"We have lost every contested action involving deceptive packaging in food. We believe that the truth-in-packaging Bill represents a better approach in bringing about improvement in packaging of consumer commodities than a program of enforcement on an individual commodity or a case by case basis under present law."

And,

"While legal actions have been taken against products on which the quantity of contents statement violated the provisions of these regulations, in each such case it has been necessary to charge violation of the Act in terms of the provisions of the Act itself rather than in terms of regulations issued under the Act, *and to satisfy the Federal court that the label in question is inconspicuous.*" (underlining added)

It is disquieting to this industry to hear Federal agencies ask Congress for the power of administrative fiat as a substitute for judicial determination, on the basis of inconvenience, bother, or their failure to prove a case. In our view fraud is fraud and deception is deception, findings of fact. And if not demonstratable, we question their existence. We perceive no legitimate distinction between a judicial standard for deception and an administrative one.

We are opposed then, in general, to authorizing a Federal agency to outlaw as deceptive by regulation, packaging practices which a court has refused to find deceptive.

The particular concern of the soft drink industry, and it is felt to be a very real concern, stems from the bottlers' long established reliance on the returnable glass container. There is today an inventory of some 28 million gross of these containers at a value of about 280 million dollars. In many cases this investment represents as much as forty percent of a bottler's net worth. If enacted, this legislation could threaten part of that investment in our view.

A consumer does not ask for a soft drink, or a lemon-lime drink, or a cola. As a matter of general practice, she asks for (or purchases) a brand name drink. This product identification did not just happen. Industry practice is devoted to the assurance that consumers know and readily identify its products by name. Distinctively shaped bottles constitute a major part of such effort. Many of these container shapes and designs are trade-marked. To change a design or package shape erases years of established product recognition and familiarity. Additionally, since a bottler cannot write-off his existing returnable inventory, package change contributes to confusion in that the product is available in two different packages until his old inventory is exhausted; this generally requires years. For these reasons package characteristics are rarely changed in this industry, and only then for a long range, major competitive move.

Yet we believe we see in this proposal the chance that a bottler could be forced to change his familiar package and suffer the marketing consequence, not because his package is deceptive, but because it has characteristics similar to some other package which administratively was judged, "likely to deceive."

We would point out a second area of practical concern expressed by our membership over this legislation. Because of the strong spirit of competition in this industry which places such a premium on distinctive packaging and product identity, a major effort goes to package design preceding the introduction of a new product. We believe that industry growth, new product acceptance, and continued consumer loyalty to brand-name image have demonstrated the value and worth of this practice. Although difficult to express by specific reference, our industry generally feels that establishing a government censor—which in effect this legislation would do—would tend to inhibit creativeness in design of new containers. Now certainly, we realize that in theory the administration of such legislation would intend to inhibit deceptive package design only: our experience with other regulatory agencies, however, leads us to believe such authority would in time dominate and tend to stifle almost all phases of packaging endeavor.

We point out again that we carry no brief for the fraudulent packager, and we fully support laws to stop and, where appropriate, punish deception. We do not seek insulation or immunization from proceedings designed to enforce such laws. We do not subscribe, however, to outlawing by decree what is neither demonstrable nor supportable in court. And we consider such practice alien to American standards of justice. Agreeing with the Senate that Section 5(c) (5) is both unnecessary and unwise, we respectfully urge that it be deleted.

We want to thank you for extending us the opportunity to express these views for your consideration.

---

STATEMENT OF THE MAGAZINE PUBLISHERS ASSOCIATION, INC., BY JOHN K. HERBERT,  
PRESIDENT

The Magazine Publishers Association serves a membership of one hundred and thirteen companies publishing over three hundred magazines of national circulation. The magazines published by our member publishers comprise in excess of 70 per cent of the total magazine circulation of the United States.

As publishers, we have several interests in the proposed legislation under consideration by this committee. Magazine publishers are an integral part of the communications network of the United States. We have provided a key link in the unification of our country by furnishing information of a public character to our people. Through the advertising pages of our member magazines, we provide the stimulus and the impetus for much of the consumer purchasing by the people of the United States. Magazines have played a significant role both in consumer education and information and in market stimulus for the products which would be regulated by the proposed legislation—food, drugs, and household commodities.

The consumers of this nation are better informed and are offered a wider range and choice of products in the markets of this nation than anywhere in the world. We believe that those products are sold to the consumer by a responsible group of marketers and advertisers. To assume, as many do, that the consumer is gullible and that the marketer is culpable is to make assumptions which are both unwarranted and unfair.

The Federal Trade Commission and the Food and Drug Administration have authority at the present time for proceeding against any manufacturer who uses false and misleading packages and labels. If these laws are not now adequately enforced, then the agencies responsible for enforcement should be instructed to do so. If specific tools of enforcement require legislative approval, then the Congress should provide them but not provide a blanket control authority with unlimited discretion as is provided by Section 5 of the proposed legislation.

Last year the Federal Trade Commission successfully completed a case against a manufacturer who had deceptively packaged an item in a carton which was much larger than the product it contained. Specific abuses such as this, to the extent that they are found to exist, can be successfully prosecuted under exist-

ing laws, as that proceeding showed, without the creation of a new structure of regulations with which the manufacturer must comply regardless of any showing of deception.

If this committee has found from the hearings which it has conducted on this bill or from the findings of the Committees on Commerce and Judiciary of the Senate that there are specific abuses in the field of packaging and labeling which require corrective action, then specific legislation should be enacted to deal with these unfair and deceptive practices.

Under the guise of a voluntary proceeding, which in practice would become mandatory, the proposed bills provide an open-ended grant of regulatory power giving blanket authority to the Federal Trade Commission and the Food and Drug Administration to promulgate regulations to prescribe uniform requirements for sizes, shapes, dimensions (H.R. 5440), weight, quantity, and type size (H.R. 15440 and S. 985). We submit that there has been no showing that such regulations are needed to protect the public. In addition to problems created by the maze of such regulations for manufacturers, we believe the housewife would be penalized because the additional costs required of manufacturers under these bills would increase the cost of commodities to the consumer. This result certainly would conflict with the consumer's own best interests, and this is the primary concern of both you, as representatives of the people, and us, as publishers who provide information to a consuming public.

It has been charged that there is some confusion in the market place. If this is so, then it is the result of the wide range of competing products offered for sale representing a variety of products which benefit the American people. It is not "deception" as charged by some critics of the marketing community.

Several months ago, Mrs. Esther Peterson, the Special Assistant for Consumer Affairs to the President, issued a report on four regional consumer conferences held in 1964. The principal conclusion of the report was the need for information for the consumer. The following statement appears in the report:

"It is recommended, therefore, that the President's Committee on Consumer Interests encourage interested organizations to conduct new or expanded consumer information and education programs at the community, state, and regional levels."

We are proud that magazines, both those in the women's service and general information fields, have been a primary source of information for consumers for many years. We believe that our editorial and advertising pages have contributed significantly to the amount of knowledge available to the public, and we hope in the years to come that we will be able to contribute even better service. We have recently offered to establish a liaison group to work with Government officials in communicating their concerns to our readers and the concerns of readers to the manufacturers and responsible Government officials. If there is inadequate information about products, we believe magazines are in the best position to find it out and communicate the needed information to the consumer readers.

It is our belief that providing information is a better and more effective approach than creating new and unnecessary federal requirements which will raise market basket prices and inhibit the creation of new products. We appreciate the opportunity of presenting our views on these matters to you.

---

**STATEMENT OF GEORGE S. BULLEN, LEGISLATIVE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, D.C.**

The National Federation of Independent Business is the largest small business-professional organization in the Country with a current membership of more than 217,000.

The Federation welcomes the opportunity to submit this statement in support of this important legislation. As this Committee is probably aware, the Federation takes a position on legislation only after polling its nationwide membership, and the position taken is one which reflects the majority opinion.

Accordingly, when Truth In Packaging (S. 985) was being considered by the Senate Commerce Committee, Federation Vice President George J. Burger, Sr., testified in support of the measure. Prior to that time our members had been polled on a similar bill, S. 387, introduced by Senator Hart during the 88th Congress:

Following are brief arguments "FOR" and "AGAINST", which our members were asked to read before voting:

*Argument for S. 387.*—Consumers have a right to full value for purchasing dollars. Merchants have a right to give them this value. But neither are able to do so fully today because some manufacturers use fancy, misleading packaging that defies ready price, quality, and quantity comparisons. Product information, if any, is in extremely small type. The results: (1) consumers are losing confidence in our system and merchants; (2) merchants are forced to carry top-heavy inventories; (3) all business suffers because the flow of purchasing power is distorted. This bill would help correct this situation.

*Argument against S. 387.*—There's no need for Congress to pass any law requiring disclosure of product information on packages. Look closely enough at any package on the shelf of any grocery, drug, or other store and you'll find the facts right there. The facts seem to indicate that sponsors of these bills have a low estimate of the intelligence of consumers, little comprehension of what has to be done these days to move goods, and a strong inclination to change the shape of our business system by adding unnecessary Government regulation. The average American consumer is the best informed in the world.

Results of the poll showed 79% for the bill, 18% opposed, and 3% no opinion. During the current Session of the 89th Congress, the Federation again polled its members on similar legislation, H.R. 1664 (Representative Celler, New York), and they were asked to read the brief arguments "FOR" and "AGAINST" before voting.

*Argument for H.R. 1664.*—This bill aims to insure that manufacturers and distributors state clearly the contents—weights, measure or count-of the package or container intended for public consumption. Consumers have a right to full value and to get exactly what they are expecting. This bill would set minimum standards for type size on printed packages and labels, prohibit "fake" sale prices on packages, prohibit packages in deceptive sizes, shapes and dimensional proportions. This bill would give customers confidence in merchants and provide more equitable competition. There's no need to fool the public.

*Argument against H.R. 1664.*—There's really no need for this type of legislation. If you look closely at any package on the shelf of any grocery, drug or other store you will find the facts right there. Proposals of this sort seem to indicate that the American consumer is unintelligent and unsophisticated in buying. This is far from the truth. Also, to standardize packaging and labeling to the extent of sameness would do damage to the very basis of merchandising that insures beneficial competition. We don't need to change the shape of our business system by adding unnecessary Gov't regulations.

Results of the poll showed 63% for the bill, 34% opposed and 3% no opinion.

When the voting on H.R. 1664 was completed, Federation President, C. Wilson Harder, announced the results in a press release, as follows:

"Contrary to representations being made that business is opposed to any legislation in regard to packaging and labelling, the nation's independent business proprietors are substantially on record in favor of such legislation.

"This is indicated by the completion of a nationwide vote taken by the National Federation of Independent Business on H.R. 1664 now before the Congress by Rep. Emanuel Celler of New York which would amend the Clayton Act to prohibit unfair and deceptive packaging and labelling practices.

"The returns show that 63 per cent favor this legislation, 34 per cent oppose, with 3 per cent undecided.

"Previously, the Federation conducted a nationwide vote on the so-called 'truth in packaging' bill by Sen. Philip Hart of Michigan, with 79 per cent voting in favor of this bill.

"The difference between the two bills is found largely in the intent. The Hart bill is primarily designed to afford protection to the consumer while the Celler bill, although accomplishing this purpose, is primarily designed to protect independent and regional packers from deceptive practices by huge manufacturers.

"In addition, the Celler bill, in amending the Clayton Act to incorporate this legislation, would make the matter a part of the antitrust laws and thus subject to enforcement by the Federal Trade Commission.

"The measure would prohibit deceptive packaging and labelling practices designed to make the consumer believe more value is offered than by competing

brands. It would also prohibit the custom of using packages falsely purporting to promote a fixed price as 'off' the regular retail price.

"Commenting on the vote, Federation president C. Wilson Harder comments. In short, the support for this measure comes from independent business proprietors who would like to see ended the false shelf "logging" tactics often used by big national packers to force independent packers out of distribution."

"He explained further that it has often been the practice for a manufacturer of a well known line to flood the trade with a package falsely offering a saving either through an implied price reduction, or a greater quantity in order to force retailers to make additional room on the shelves, thus squeezing out competition."

---

**STATEMENT OF THE PENNSYLVANIA LEAGUE FOR CONSUMER PROTECTION, BY JAMES A. CONNERS, EXECUTIVE DIRECTOR**

Mr. Chairman, the Pennsylvania League for Consumer Protection wishes to thank the members of this Committee for permitting this statement to be included in the testimony on fair packaging and labeling legislation.

This statement is submitted in support of H.R. 15440, introduced by Congressman Harley O. Staggers.

The Pennsylvania League for Consumer Protection is composed of individual members and affiliated groups and organizations through the Commonwealth. We count among our membership 3½ million consumers from religious, labor, civic, women's ethnic, rural, and farm groups. The League is bipartisan and has been vitually interested in consumer protection legislation in our own state as well as that pending before Congress.

In the Commonwealth of Pennsylvania the consumer has a vast interest in this bill and what it will do for him. At our annual convention we adopted the principal of this bill. At a board of directors meeting last month we specifically decided to support H.R. 15440 and "fair packaging and labeling" invariably come up as a main point of discussion whenever consumers meet in our state. The public media has constantly kept up a running discussion in "consumers' columns" and in editorials on this matter. So, although we are not well informed in the marketplace as to what and how much we are buying, we are well informed that there is a struggle pending in Washington over "fair packaging and labeling."

The consumer needs a modern, comprehensive, industry-wide packaging and labeling statute.

Modern merchandising of today is a far cry from the days when a shopper bartered at arms length in the marketplace where there were few pre-packaged products and the merchandise was available and weighed before the customer's eye. In this era of self-service and mass marketing of products we are getting beyond the point when the grocery clerk answered all of the questions.

As a consequence, the label and the package plays an increasingly important role since in many instances it is the only source of information for the supermarket shopper. And, the modern consumer is presented with a bewildering variety of sizes and shapes, verbal descriptions, weights and measures, and gimmicks which not only make comparative shopping difficult, but impossible in many instances.

We believe that H.R. 15440—commonly referred to as the Staggers' "Fair Packaging and Labeling Bill"—would once again guarantee the consumer the right to know what he is buying and for how much. We believe that it would remove many of the psychological traps, built-in confusions, and outright deceptions confronting the visitor to the supermarket in our modern economy. We believe that this important measure should become the law of the marketplace where it would establish the best practices that would become the common practice.

This bill would not require that the buyer be given any information that the manufacturer, packer, or producer does not desire for himself. Industries know exactly what they go for their money because they order it by quality and specification. They have lawyers who draw up tight agreements and accountants who know unit costs and profits to a fraction of a point. They even know the ratios of ingredients contained in their products and have methods to test merchandise they purchase as well as what they put on the market.

A customer can't take a lawyer, accountant, or chemist with him every time he goes to the supermarket or drugstore and he shouldn't have to go to such lengths to discover what he is buying. However, this unequal advantage that the producer and manufacturer possess over the customer can be overcome by requiring them to print accurately, clearly, and meaningfully the basic information on the label that they now possess and would have to tell the customer if they were personally asked.

Part of the industry is already complying with such acceptable standards. It's paradoxical that the same high standards of packaging and labeling which are extended to a husband when he buys his favorite bourbon at the liquor store are not extended to his wife when she shops for food. He has no problem, no deceptions, no misleading labels to confuse him. He can make price comparisons easily for he can tell that a fifth of one brand of bourbon at \$4.80 is *really* less expensive than a competing fifth at \$5.10. He doesn't have to contend with "Economy Sized" fifths, "Party-Sized" fifths, or meaningless phrases like "Seven Full Servings" vs. "Eight Large Drinks." His special brand does not say "5 Cents Off" one week and "10 Cents Off" the following week while real selling prices remain unchanged.

We hope you will be unimpressed by the arguments advanced by the special interests against "fair packaging and labeling." They are the same arguments that are advanced against every piece of consumer-protection legislation regardless of the subject or the reasonableness of the measure. They will contend the same faults with this bill in the House of Representatives as they did with a similar measure in the Senate.

They claim industry should be given an opportunity to make its own standards, although we see the chaos that is already created in the packaging industry. The trend is away from self-regulation and toward a proliferation of sizes and shapes, unless there is agreement on how to make shopping more confusing.

They made the familiar argument that such legislation should be left to the states—to protect the citizens within their borders. But at the state level we see the other side of the shell game when these same interests contend that the Federal government is studying such legislation.

Some industry spokesmen claim regulation will burden the industry and imperil free enterprise. Standard sizes have not harmed the milk, butter, sugar, or flour industries. Other industries have withstood the "shock" of the Wool Products Labeling Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act, and the Poultry Products Inspection Act. These laws have not weakened those industries nor strait-jacketed imagination and creativity.

On the other hand, the packaging industry has not worried about the burden placed on the public by slack-filling, incomprehensible weights and measures, multi-meaning adjectives, and inconspicuous quantity designations.

They are not concerned about the loss to those shoppers least able to afford them, when the best bargain is not made because of misleading or deceptive labels. Yet present practices are heartless, when the economic standing of those persons most affected are considered. There is nothing wrong with a law in modern society which in its enlightening way seeks to protect the more defenseless segments of our population from situations brought into being by our complex economic structure.

A few cents loss to a consumer on any one purchase may not seem like much, but the industry knows what it means when they sell several million boxes of that item.

That is why they are fighting this legislation—the few pennies on each purchase that may add up to substantial erosion of each consumer's budget amount to an impressive fortune in profits to them.

Packaging, as we see it practiced today, is part of a firm's competitive strategy to create ever greater sales and profits. However, increased profits derived from deceptive packaging is difficult to justify in today's marketplace. The maxim "Let the Buyer Beware" is a cruel and immoral doctrine.

Some are bold enough to admit that weird weights and sizes come about as a means of rising prices without appearing to do so. Rather than subject the consumer to a direct price increase, the size and weight of the package is reduced. The housewife is supposed to be content if the price of her favorite cereal remains at 39 cents although the box now only hold 12 instead of the former 15 ounces. But, in most cases it is quite a few purchases later that the mother

discovers that there has been a price increase per ounce. The Staggers Bill would have manufacturers who find their costs creeping up either absorb the cost or openly raise prices. This is done in the milk, butter, and flour industry today—all sold in standard sizes—and both the vendor and purchaser survive.

Industry spokesmen claim that a new law is unnecessary because there are laws existing which, if properly enforced, would prevent deceptive packaging and labeling. It should be pointed out that industry fought these meager regulation behind which they now seek to take refuge.

The case-by-case approach to regulation which they claim is satisfactory for a consumer's redress was adopted decades ago when deception was not widespread and the amount of pre-packaging was negligible. Today, there are some 8,000 items on the average supermarket shelf. It would take years to obtain the much needed standards under the present system of legally challenging questionable practices case by case. Congress can specify these standards directly and clearly in "on giant package" by passing the Staggers Bill. Even the most liberal and far-fetched interpretation of existing laws could not give these agencies the authority so necessary to standardize sizes, language, and prominence of net weight statements.

The contention that present labeling practices are adequate for economical shopping is specious and unprovable. As long as reasonably intelligent shoppers are fooled or deceived in the marketplace, a need for new legislation is present. There has been testimony introduced in these hearings concerning an experiment at Eastern Michigan University where married, college-trained women could not shop prudently when they endeavored to do so. No mistakes were made on which product was the best bargain on staples like sugar and flour. The bad bargains were made where odd and meaningless sizes and measures were involved.

On the other hand, industry has also conducted experiments. But, they are not to determine whether sizes confuse or labels fail to impart true quantity or quality of the product. Motivational researchers, proceeding on the theory that the shopper is irrational, experiment on methods and techniques by which meaningful economic information will be subordinated to color attraction and other hypnotic responses. Other experiments follow the worst trait in packaging today, i.e., when a competitor brings about a new price, quantity, or quality package disguise, it not only should be imitated but improved upon. This means that, left alone, the packaging and processing industry will not voluntarily eliminate these bad traits because it is bent on outdoing competitors.

The specific provisions of the Staggers Bill would require that the consumer be given those things which will create equality in the marketplace. It will require the seller to give the buyer the tools with which to make the wisest selections. Meaningful price comparisons on market-basket commodities will result in more value for the dollar in quality and quantity. It will bring about true price competition. It will save the harried shopper time and effort. It will help save money by making the best bargain.

The mandatory provisions are not onerous to packers. They merely require minimum standards for prominence on the label for commodity identification, manufacturer's name, net weight or count statements. These must be on the principal display panel. These items must be legibly printed on a contrasting background without misleading or exaggerated adjectives. Contents of less than four pounds or one gallon must be stated in ounces or whole units of pounds, pints, or quarts.

A shopper should not have to study every package from all angles to read a label which is printed on metallic paper or contains non-convertible quantity statements or omits the net weight entirely.

The discretionary provisions grant the Secretary of Health, Education, and Welfare and the Federal Trade Commission authority, wherever necessary, to make product-by-product regulations to prevent deception or to aid the consumer in comparing prices. Equitable procedural safeguards fully protect the industry from arbitrary action.

One of these provisions would require conspicuous placement of "sufficient ingredients or composition information." There seems to be no good reason why this should not be done for without this information comparisons of price, quality, or wholesomeness cannot be made. Some laundry detergents vary greatly in density and percentage of cleaning agents. The ratios of cane to maple syrups in pancake syrups or natural juice to water should be disclosed as a matter of right to a purchaser.



Manufacturers already have this information. They would not dare attempt to determine their cost factors and profits without knowing what went into their products.

The "Cents Off" blurb is one of the most successful, yet deceptive, sales gimmicks since "Easy Credit." "Cents Off" statements would be prohibited when they are used to bait a customer and are not really cents off.

The so-called "Wizards of Off" seldom employ "Cents Off deals" for the valid purpose of introducing a new or improved product. They seem designed instead to confuse the customer by making it impossible to tell the new price, the old price, or the regular price. The shopper cannot tell which are actual price reductions.

The "deal is widely advertised by the manufacturer but in many cases is not implemented by the retailer. The customer is made a promise in the form of a "come-on" which the manufacturer cannot guarantee will be fulfilled. Can this be a high standard of practice? The buyer is deceived, the honest retailer or manufacturer is penalized, and the practitioner of this trait benefits.

Another valuable section creates the power to arrive at standard nomenclature used in qualifying the size of a package. In today's marketplace, members of this committee as well as the consumer cannot distinguish between "Family," "King," "Jumbo" size designations prominently projected from packages. Every pantry is filled with evidence where the "Large Size" is the small size—or the only size—or the "Regular" is the same size as "Large" or "Medium"—or the "Economy Size" which didn't save money.

This confusion of adjectives prevents easy price comparisons. Furthermore, the lack of standards here permits the use of another "bait and switch technique." The consumer is baited with a particular size designation of a certain quantity that is instilled in her mind by heavy promotion and advertising. Then the unsuspecting housewife becomes the victim of a "switch" when the "Economy Size" she is accustomed to has been lowered in quantity without notice or any advertising. In effect, this is an increase in price because she bought less than she thought she purchased.

This provision will be of benefit to the manufacturer. He shouldn't be burdened by having to continually change the sizes of his packages to keep up with unfair competition and unethical practices.

Still another provision would set serving standards to enable the consumer to compare competing products as to weight, measure, or count. In a climate of improper regulation, manufacturers vie with each other in outpromising "servings" in a package or the number of "average wash loads" a detergent will clean. The ultimate loser is the ultimate consumer.

Finally, the bill provides guidelines with which to bring some common sense standards to check the growing and weird variety of packages and containers which either impair or make price comparisons impossible.

Under the voluntary product standard program of the Department of Commerce, industry and government officials may agree on the most practicable and desirable sizes. This means that instead of 19 sizes of instant coffee, there may be three sizes—maybe even a return to the long-forgotten terminology of small, medium, and large—with nomenclature that really mean what they say. The producer or distributor could request the Secretary of Commerce to arrive at a voluntary product standard after reaching a consensus among producers, distributors, users, and consumers. If the need for arriving at a standard under the procedure were not met within a year and a half, only then could the administering agency adopt a standard.

This is the most reasonable method to protect the businessman and the consumer. It calls for the weighing of cost considerations, examination of existing sizes and package materials used. Changes would be prohibited which would vary from a voluntary product standard where weights or measures are less than two ounces and where re-usable glass containers are presently in use.

After a review of the protection that the consumer lacks in the modern marketplace it seems almost incredible that we do not have modest legislation like H.R. 15440. The consumer, who is responsible for two-thirds of the spending in our economy, should have a right to know what he is buying and have the minimum, basic economic facts disclosed to him. No businessman, manufacturer, producer, or packager would make purchases under the same conditions.

Tricks in packaging belong in the "cracker-jack box" and not in the great American marketplace—where free men and women should be able to buy, sell, and produce freely.

This measure proposes a commendable purpose and forthright principals which no industry should reject. We feel that this legislation is in the great public interest—for we are consumers all. We urge that this bill be given favorable consideration by this committee. The industry has had a long time to police its own practices and adopt standards of conduct. It is now time to enact this measure into law so that we can get on with the business of re-establishing the competitive price system once again in the consumers' marketplace.

We respectfully submit this statement for inclusion in the record of the hearings before the Interstate and Foreign Commerce Committee.

---

**STATEMENT OF MRS. E. D. PEARCE, PRESIDENT, GENERAL FEDERATION OF WOMEN'S CLUBS**

Mr. Chairman and members of the Committee, I am Mrs. E. D. Pearce, President of the General Federation of Women's Clubs, which, as some of you may know, is the largest organization of women in the world. Today, though, as I deliver my statement on behalf of all members of the GFWC, I want you to think of us not as an organization but as individuals by the thousands who go to the grocery stores.

Because we do most of the grocery and other shopping for our families and because we take very seriously our responsibility to carefully manage our household dollars, we earnestly urge your favorable support of the Fair Packaging and Labeling Legislation.

Laws do not "just happen." For the most part, they are the result of a need. And, if judged only by the interest which women have shown in this legislation, it becomes apparent that there is indeed, in this case, a definite need.

Our support of a Fair Packaging and Labeling law is based on a resolution which was adopted by the General Federation of Women's Clubs in convention in 1962. The resolution to which I refer is entitled "Misrepresentation In Advertising and Marketing" and it was adopted because we feel that a law is needed to more fully protect the consumer from any misrepresentation in labeling.

Thank you for your kind attention and for letting me express the opinion of the consumers whom I am privileged to represent.

---

**STATEMENT OF LEE W. MINTON, INTERNATIONAL PRESIDENT, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO**

The Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, is a trade union representing over 70,000 employees in the glass, rigid plastic container, fiber-glass and allied industries. We are very much concerned about the effect certain provisions of HR 15440 will have upon production; hence, employment in the glass container industry.

There is no question that in certain market places consumers have been and are being cheated out of hard earned wage dollars by deceptive merchandising practices. It follows, therefore, that this International Union does support necessary legislation to protect the consumer and we are in agreement with the well-meaning objectives of HR 15440, better known as "truth in packaging".

However, if we are to achieve "truth in packaging", it can and should come in only one form, and that is pure, simple, legible and understandable labeling; not in a quagmire of government controls.

A "truth in packaging" bill can and should require that every container should have an applied or printed label prominently located: a label which legibly and understandably would reveal the net weight or net content, or both, of the contained product. Qualifying words or phrases and deceptive pictures or illustrations should be prohibited.

This International Union, however, is opposed to Section 5(c)(5) of HR 15440 which would authorize regulations preventing the distribution of consumer commodities "in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof. . . ."

We also oppose Section 5(d) which would regulate weights and quantities.

Glass containers are transparent and consumers see what they buy when they buy in glass. There is no possible way consumers can be deceived, quantitatively or qualitatively.

The packaging industry is a 21 billion dollar a year industry employing hundreds of thousands of wage earners. This industry exists not for deception but for business and to stay in business they have to meet the needs of the consuming public. Packages, especially glass containers, are designed the way they are for hundreds of reasons, the most important of which are production and filling line efficiency; ease of shipping and handling; economy and functional end use.

Millions of dollars are spent in research each year to improve sizes and shapes of containers—not to deceive the consuming public—but to give the consuming public a better and cheaper package. To hamstring the industry by Section 5(c)(5) would produce just the opposite results—increased costs to the consumer. With over 80% of each wage dollar being spent for packaged foods and goods, any increased cost would be felt heavily and widely among wage earners who are the largest individual group of consumers.

Equally as important, and of practical rather than selfish concern, these two sections will do untold harm to employment in the packaging industry. Employment—from design, pattern and mold making to selecting and shipping will suffer.

In summary, the consumer can and should be protected from deceptive merchandising practices. This can be done by proper labelling laws and better enforcement of existing laws. Sections 5(c)(5) and 5(d) should be eliminated or, in the alternative, amended to exclude glass containers.

---

#### STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL

"Truth-in-packaging" legislation, passed overwhelmingly by the Senate on June 9, is now bogged down in hearings before the House Committee on Interstate and Foreign Commerce.

A lengthy parade of witnesses is undergoing extensive questioning on matters on which an exhaustive record has been compiled over the past five years.

We are concerned that passage of this much needed consumer legislation may, in fact, be filibustered through the device of prolonged and leisurely interrogation.

We are convinced that truth-in-packaging legislation has the overwhelming support of the American buying public as well as of the trade union movement.

It should be a matter of elementary fair play that packages be plainly and honestly market as to their contents. Equally important is the need to re-establish a usable system of weights and measures in our retail markets, a system which has been deteriorating as use of packaged products grows. Because of the present chaos of weights and quantities in which packaged products are sold, consumers are no longer able to make meaningful price comparisons between one product and another. The impairment of retail price competition is of special concern in a period of rising consumer prices generally. The pending legislation would pave the way toward a solution to this problem.

We earnestly request that the House Committee on Interstate and Foreign Commerce move speedily to complete its consideration of S. 985 and H.R. 15440, so that final action on truth-in-packaging legislation may be concluded in the present session of the Congress.

---

#### STATEMENT OF THE PRESSURE SENSITIVE TAPE COUNCIL

My name is William C. Ives. I am one of the attorneys for the Pressure Sensitive Tape Council. The Pressure Sensitive Tape Council, located at 1201 Waukegan Road, Glenview, Illinois is an unincorporated not-for-profit trade association consisting of the domestic manufacturers of pressure sensitive tape. It is reliably estimated that the eleven manufacturers<sup>1</sup> who are members of the Council

---

<sup>1</sup> Adhesive Tape Corporation; American Tape Company; Anchor Continental; Arnoturing Company, Inc.; Ideal Tape, Inc.; Johns-Manville-Sales Corporation, Dutch Brand Adhesive Tapes, Inc.; Behr-Manning Division of Norton Company; Hampton Manufacturing Division; Minnesota Mining & Manufacturing Company; Mystick Tape Division, Borden Chemical Company; Permacel Division of Johnson & Johnson.

produce and sell in excess of 90% of the pressure sensitive tape used in the United States and that their combined annual sales of tape exceed \$300,000,000.

Pressure sensitive tape, of one kind or another, is widely used today throughout the United States. In fact, it is safe to say that this tape, from the familiar transparent tape purchased in small dispensers at five and ten cent stores to the large rolls of heavy duty industrial tape, has become an indispensable item for most homes, offices and factories.

The Pressure Sensitive Tape Council is in agreement with the policies stated in Section 2 of S.985 and with the purposes of that Bill as set out in the Senate Commerce Committee Report thereon. However, it believes that certain amendments to S.985 are necessary to insure that the Bill's coverage is sufficiently broad to fully implement these policies and achieve these purposes.

The stated purpose of S.985 is to adequately inform consumers of the quantity of contents of commodity packages. It is therefore necessary that accurate statements regarding the measurement of the contents appear on the required package labels. Where the package involved contains tape, the most meaningful way to inform consumers about the quantity of contents of the package is to have the linear measurements of the tape clearly set out on the package label. Thus the Council members recommend that the language of Section 4 (a) (2) be amended to make it quite clear that the net quantity of contents, which must, under the provisions of S.985, be properly stated on commodity labels, be stated in terms of linear measure (inches, feet, yards) whenever appropriate.

There is little doubt that those who drafted and passed S.985 intended the word "measure", as used in the Bill, to encompass linear as well as other types of measure. Yet, there is nothing in the Bill itself or in the Senate Commerce Committee Report which indicates that this was actually considered. Therefore, the Council believes it necessary to amend Section 4 (a) (2) and all other appropriate Sections of S.985 in such a manner as to make it clear that the term "measure" does include linear measure.

If the purchaser of packaged tape or similar products is to be adequately informed regarding the net quantity of contents of a particular package of tape, it is not only necessary that such contents be stated in terms of linear measurement but that the unit of linear measurement stated on the package label be meaningful. To be truly meaningful there should be a direct and ready correlation between the unit of linear measurement stated on the package label and the unit in which the product is normally purchased and used by the purchaser.

For example, the statement on a label that a package contained so many inches of ordinary clothesline rope would not be particularly meaningful to most purchasers who would normally use many feet of such rope and therefore think of it in those terms. Likewise, it would not be meaningful to a purchaser of a small dispenser of transparent household tape to read on a label that the dispenser contained so many feet of that tape. This kind of tape is usually used in very small amounts, often only an inch or two. Therefore, to adequately inform consumers of the quantity of the products they purchase, the linear measurement of the product should be stated in terms which closely correspond to the units of measurement in which the product is used.

Accordingly, in order to achieve its purposes, it is necessary that S. 985 provide manufacturers and packagers of tape and kindred products with an opportunity to state the net quantity of contents on their commodity packages in units of linear measurement which are meaningful to the consumer. This can be accomplished for tape and similar products by amending Section 4(a) (3) (A) of S. 985 to permit package labels to state the net quantity of contents in terms of inches or in terms of whole units of feet if the total linear measurement of the packaged commodity is, for example, less than twelve feet.

In addition to emphasizing the need for amendatory language which would make it clear that S. 985 requires the linear measurement to be stated on commodity package labels and that linear measurement should be stated in units which correspond to the units in which a particular commodity is purchased and used, the Council believes that S. 985, if sufficiently broad in its coverage, will preempt the field of consumer package labeling, and thereby bring order out of the present rather chaotic state of current labeling laws and regulations.

Today, manufacturers of consumer products are faced with a wide variety of state laws and regulations which attempt to regulate and control their labeling practices. The National Conference on Weights and Measures has, through its Model State Law on Weights and Measures and accompanying Regulation, at-

tempted to alleviate this unreasonable burden on both the consuming public and manufacturers. However, fewer than one half the states have enacted the Model Law and Regulation, and some of those adopted it only after important changes were made. Furthermore, there are substantial differences in the enforcement procedures of state regulatory officials which further adds to the confusion.

Unfortunately, the scope of S. 985, as presently drafted is readily susceptible to such narrow interpretations that it cannot realize its full potential as a method of bringing order and consistency out of this morass of conflicting state labeling laws and enforcement procedures. An example of this is found in Senator Magnuson's statement to the Senate on June 2, 1966, containing his views on certain aspects of S. 985 (Congressional Record for June 2, 1966, beginning at Page 11503). Senator Magnuson stated that S. 985 is not intended to cover, among other things, "paints and kindred products" and "gift wraps." These two categories of consumer products could easily be interpreted to include various types of pressure sensitive tapes such as masking tape and transparent or cellophane tape. The Pressure Sensitive Tape Council believes that these and similar tape products should be within the scope and coverage of S. 985 and that the definition of consumer commodities in that Bill should be expanded to make certain that they are.

Accordingly, the Council recommends that S. 985 be amended so that it covers commodities generally rather than only those which are narrowly defined as "consumer commodities" usually found in supermarkets. Such an amendment would substantially reduce the confusion caused by conflicting state laws and inconsistent enforcement policies.

The Pressure Sensitive Tape Council would like to express its sincere appreciation to Mr. Staggers and the other members of the House Committee on Interstate and Foreign Commerce for the opportunity to present this statement today.

---

#### STATEMENT OF THE WASHINGTON TEACHERS' UNION, WASHINGTON, D.C.

The Washington Teachers' Union has the honor of testifying before this Committee in behalf of S. 985 and H.R. 15440, bills to assist the American consumer by fairer methods of labeling and packaging. More explicitly, the legislation under consideration is designed to enable the purchaser to buy more wisely and thus use his dollar to better advantage. High income is of little value if it is not spent wisely. The housewife is unlikely to get her money's worth in the supermarket, if she does not have a fair chance to compare the actual value of the commodities and products that are competing for her patronage.

Legislation of this type is necessary, if American consumers are to be able to use their money to the best advantage under the changed economic conditions that confront all of us. More than a century ago, laws against the crudest types of deception and fraud were adequate to protect an individual of literacy and common sense. That, however, has changed. As discoveries and inventions added useful products in the market, methods of chicanery and misrepresentation likewise became more subtle. As a consequence, the Pure Food and Drug Act was enacted. That, as you know, has subsequently been amended to keep up with changes in marketing and production. The Federal Trade Commission was set up to safeguard the interests of American citizens in spending their money.

The legislation to which we referred in the preceding paragraph was intended to assist purchasers against actual fraud, misrepresentation or misstatement. At the time of its enactment, it served and has served a useful purpose. Now, however, economic evolution has brought us up against a very different problem. It is no longer sufficient for the government to protect the citizen against actual criminal practices. The consumer can be cheated without any actual violation of present laws.

There are so many products on the market to be purchased that the buyer is at a loss to know which one will give him the most for his money. It has been estimated that the number of articles on sale has increased from 1,500 to 8,000 since the end of World War II.

Not only has the variety of products from which the purchaser chooses increased; but a fundamental change in the process of salesmanship has taken

place. In American food stores, for instance, the customer is not always able to talk with a salesman to learn the relative merits and demerits of available merchandise. Instead he is confronted with a vast array of articles displayed on shelves. It seems, moreover, that rather than an effort to assist the consumer in making his choice, there has been a general policy of confusing him. The ordinary individual is frequently at a loss to know what article to buy or which package of it to take home.

Very clearly, the present legislation in force cannot cope with the radically changed economic conditions facing the American consumer in the latter part of the twentieth century. Instead of statutes protecting him against mislabeling, misbranding, or other outright fraud, there must be positive assistance in his effort to make an intelligent choice among ever increasing articles for which he may spend his money. That is the prime objective of a labeling and packaging bill as we see it. That is why we support the legislation now before this Committee.

Before making specific recommendations for legislation to correct the present difficulties facing the American consumers, we intend to spell out the things that should be changed. First, the net weight of any article of merchandise on sale should be stated in a conspicuous place. We may add that this is only a minimum requirement. If the manufacturer desires to go beyond that and put the net weight on more than one panel, he should not be prevented from doing so.

Next, deceptive illustrations are sometimes used with the result that the customer is misled or deceived about the merchandise which he is examining. We think pictures on packages should bear some relationship to what a reasonably prudent consumer could expect from the contents.

There is also the practice of using adjectives to describe the net quantity giving the impression that a greater amount than the same quantity of a competitor is offered such as "giant half quart" in place of "16 ounces" or "pint."

In addition, the manufacturer sometimes imprints on packages "information" to give the impression to the purchaser that the latter is getting a bargain, although the former has no control over the price set by the retailer.

There is, moreover, a growing tendency to use containers of sizes, shapes and dimensional proportions which give an exaggerated impression of the actual quantity within. This may incidentally include nonfunctional slack fill forcing the customer virtually to pay for air.

Again, certain designations are frequently used which have little or no actual relation to the quantity on sale. We refer specifically to such expressions "large size" or "king size" often seen on packages in supermarkets. The difficulty of course, is that there is no exact definition of such terms in our language. A large ant and a large elephant may come under the definition with equal correctness. As a matter of fact, it is easy to mark the smallest container of toothpaste "large."

Meaningless serving designations are frequently used. When the purchaser is told that what he is buying "serves two" he is being helped very little. Two individuals may eat more than four other human beings.

Perhaps the most confusing and harmful practice of all in our stores is the proliferation of weights and measures expressed in odd amounts making price comparisons on the spot almost a mathematical impossibility. For instance, a customer may have to decide quickly whether he is getting a better bargain by paying thirty five cents for twenty ounces or forty cents for twenty four and one half ounces.

We think that this is the area in which the American consumer needs the greatest assistance in spending money wisely. Wages and salaries have increased to the highest point in the history of our country. That is true not only in the number of dollars received per week or month by workers, but also if we consider the purchasing power of compensation received. That is, the potential purchasing power of our people is greater than ever. Whether they actually get more for their larger checks and pay envelopes depends very obviously on how their money is used. Higher pay is an illusory benefit if its recipients do not know how to use it to their advantage.

As we see the situation confronting us, the most important thing for Congress to do is to enact a law which will enable housewives and other consumers to use their money wisely in a competitive market. As new products are offered, more and more ingenious methods of selling them are certain to be used. Some-

times these are employed with the welfare of the public in mind. That, however, is not always the case.

Whether by accident or design, the American consumer is frequently non-plussed by what he encounters in our stores. He is bewildered not only by the variety of products competing for his money, but by the manifold designations on them. What is needed above all things is an opportunity to make intelligent decisions on the relative merits of goods that he may purchase. This means, of course, accurate judgment of quantity and quality. As for the latter only a negative approach can be taken at the present time. The Government can do little more than guarantee the public against misstatement and misrepresentation about the ingredients of a package on display.

As for quantity, however, something can be done. Not only can the amount contained in a package be clearly labeled, in addition, the contents of the many containers should be standardized so as to enable the purchaser to make an intelligent choice among them on the spot. We know that this can be accomplished because in some lines of business, it has been done. In the liquor industry, for example, the purchaser is able to make quick calculations in terms of gallons, quarts, fifths and pints. He has a fair chance to determine whether his money will be better used in buying a smaller or larger quantity of the merchandise on display. What has been done in one case is possible in another.

This seems to be the key to the whole situation. Packaging has become an increasingly important feature of our modern commercial life. More and more articles are offered for sale in various kinds of containers. As a result packaging has reached a point where it needs better control, that is, regulations are needed to enable the consumer to make quick and meaningful decisions about buying the articles before him in the market. In these times, he cannot do so, unless the information needed is made available. This information must also be in a reasonably simple form.

Before coming to our conclusion, we shall attempt briefly to deal with some objections to this proposed legislation. First, it is maintained that the present law is adequate for the purposes of these bills. Even if that was once true, it is not so now. The laws now on the books were designed to prevent actual deception. It was intended to deal with definite cases of mislabeling and misbranding. The practices which are now confusing the American public are mostly within the law. A corporation is not likely to be caught in outright violation of present statutes. Legislation enacted under very different conditions from those now prevailing is imprecise about the actual situation facing the housewife in the supermarket. The whole situation can be summarized by saying that the practices which we wish to prevent are not generally prohibited by present law. In other words, what the law does not say in this case is more important than what it does. This is why some changes are necessary.

Another argument is that the consumer will be deceived only once or at least not repeatedly. That sounds logical enough, but it does not always work out that way. Shopping takes time and the individual doing it does not always have as much of it as he would like to devote to this chore. It is simply not practical to weigh and inspect every article in a supermarket. Again, it might not do much good anyhow. If you discover that one piece of merchandise is not all that it should be, others may also be defective. The purchaser should be able to choose among goods that can be adequately and quickly compared.

The objection that further labeling would increase costs will probably not stand up. Labels are being changed constantly and that costs money. It is almost impossible to compete in business these days without making some changes in methods of promoting the sale of a product. At the present time it would be difficult to estimate what increase in the cost of the law would result. To be sure, it costs something to administer almost anything.

There are other objections; and we probably cannot answer every conceivable argument against these bills, in our testimony. There is however, one contention that should not be left unanswered. It is alleged that the average American consumer is satisfied with the present situation. It will not be difficult to rebut this. Consumer Reports, a leading consumer magazine with one million readers, tells us that there is more interest in this subject than in any other consumer issue during the thirty year history of their publication. Likewise surveys conducted by industry show that quite a large percentage of respondents are dissatisfied with present practices which they encounter.

All of these arguments have a familiar ring to them. They are based on certain underlying assumptions which will probably long persist. First, there is the assumption that what was once fairly adequate will still be sufficient to do the job facing our economy. We cannot repeat too often that times and circumstances have changed. Legislation that once sufficed to protect and safeguard the consumer will not necessarily continue to do so. These laws were designed to prevent the purchaser from being positively deceived or defrauded. The practices we are trying to combat are far more subtle than the relatively crude mislabeling and misbranding of bygone days. We need new tools to do our job. This proposed legislation will put them in our hands.

The laissez faire economic philosophy of the early nineteenth century also lingers on, subconsciously if not consciously. People still assume that if the government restricts its role to that of an economic umpire to prevent positive violation of the rules, competition will somehow work out to the advantage of everybody—particularly the consumer. However that may have worked out under simpler economic conditions, it will not do in our present situation. Conditions in the market are much too complex for any individual to use money to the best advantage, without some kind of assistance. This may come from government or industry or both.

That brings us toward our conclusion. This legislation provides for co-operation between government and industry to assist the American consumer in getting the best possible return for his money. This seems to us to be an ideal way to make a free economy work. It is often assumed that as the government extends its activities in our economic life, the activities and initiative exercised by private business will inevitably be restricted. Very clearly, the legislation under consideration by this Committee would not work that way at all. Here we have a plan by which the national government will assist and encourage business and industry to work out voluntary plans of labeling and packaging which will insure fair competition for the benefit of the consumer. This is the type of competition that makes our system work. Indeed it is hoped that the enactment of bills like these into law will mark a turning point in relations between American business and the public.

Fair and efficient competition for the customer's money is an ideal way to make our free economy continue to operate successfully. As new and better products are made available by our advancing technology, the buying public should be able to take full advantage of improvements. That, in turn, will eventually help business. We think that enactment of legislation of this type is the best thing our government can do for all the interests concerned. Our Union, accordingly, supports these bills and strongly urges this Committee to act on them favorably, so as to insure passage of such legislation by the 89th Congress.

---

#### STATEMENT OF ELLA G. ROLLER, ELLA G. ROLLER & ASSOCIATES

My name is Ella G. Roller. I reside at 2740 Bretby Drive, Troy, Michigan, a suburb of Detroit. I have been concerned with consumer problems ever since the depression of the 30's when I was a young mother trying to stretch our income to maintain a decent standard of living for my family which consisted of three children.

In 1937 we moved to the suburbs of Washington, D.C. and I organized Wise Buying Clubs in the nearby town of Greenbelt, Maryland. I was a member of the Organizing Committee of Greenbelt Consumer Services, although I did not live in the town, and was elected Vice President and Education Chairman of that consumer co-op. In 1938, I gave a course on consumer problems at the University of Maryland and helped organize 800 families into the Milk Buyers Club. We brought the price of milk down 2¢ a quart in College Park, Berwyn, and the Greenbelt areas.

The Food and Drug Administration asked me to testify on behalf of the consumer at hearings on the use of dangerous dyes in cosmetics, and on standards of identity for many foods. The Federal Trade Commission had me testify, on behalf of the consumer at deceptive advertising hearings which included one against Dr. Lyons toothpowder.



In 1939 I testified as a consumer expert before the Senate Temporary National Economic Committee. At that time I believe there were five consumer witnesses. We were complaining then, about many of the same problems that exist today. That was over 26 years ago. And industry has not done much to cooperate with the housewife in all that time. I have read and heard many statements by industry representatives, to the effect that business could not prosper if it were not geared to the best interests of the consumer. That's not true. Business is geared to the profit motive which has nothing to do with the best interests of the consumer.

Let me get this into the record before proceeding further. I am for the profit system and always have been. I believe in the competitive system and certainly in the form of capitalism practiced in this country. That system has been good to me and my children, and it has made America strong. But some businessmen and some industries are more concerned with the almighty dollar than with the welfare of the housewife who is trying to make ends meet.

Years ago, when I used to testify at government hearings, there always were women who testified, whom we referred to as "phony consumers". These were the women who really were in the employ of industry and testified on behalf of industry although they tried to appear as witnesses on behalf of the consumer.

So that no one will mistake me for a "phony consumer", and so that the members of this Committee will consider that I am competent to offer testimony, I would like to give a few more details regarding my background.

I was a member of the staff of the Consumer Division of OPACS and OPA from 1940 to 1945. I have written articles for *Consumer Reports* from 1939 to the present. I have written consumer articles for many other national magazines.

I served as Consumer Advisor to Senator Kefauver in 1958 and as Consumer Advisor to Congressman John Blatnik when he was Chairman of one of the subcommittees of the House Government Operations Committee in 1957.

Last year I wrote a book, on consumer problems entitled, *Ella Gale's, \$\$\$ and SENSE. Your Complete Guide to Wise Buying*, with a preface by U.S. Senator Philip A. Hart. It was selected as the November Book of the Month by Kiplinger.

Congressman Abraham J. Multer made some very flattering remarks about it which were printed in the Congressional Record September 2, 1965. Congressman John A. Blatnik made a speech about the book in Congress on Friday, October 22, 1965.

Since I am mentioning the book and since I have referred to the attitude of some segments of industry to the consumer, I would like to detail my personal attitude and I can do it most quickly by quoting from the last chapter of my book:

*"And in conclusion:*

"I don't want you (the consumer) to think from reading this book that the world is full of chisellers and that everyone is out to fleece you. Nothing could be farther from the truth. Our economy is built on the free enterprise system which means competition. Manufacturers compete with each other, so do retailers, and this frequently tends to bring prices down.

"But manufacturers and retailers, every segment of business must make a profit in order to survive. It is when corners are cut too close that consumers get it in the neck. Businessmen know better than you or I, who the chisellers are in their particular sphere of operations. They know every trick of their trade. Most look with repugnance on sharp practices. They complain about these matters among themselves, but not to the consumer. To us, they put up a united front. Most claim their Number One Objective is service and quality and they are completely devoted to the idea.

"The fact is, their Number One Objective is to stay in business with a PROFIT, which is as it should be!

"Your Number One Objective is to get a dollar's value for every dollar you spend. It means, comparing, examining, checking the ads, comparison shopping. Try it—it's as American as the Profit System!"

Early in 1941, the Standards Section of the Consumer Division of OPA wanted to standardize the sizes of cans used in foods. The experts felt that this would make purchasing easier for consumers and at the same time would save metal which was badly needed for war material. When the canning industry heard about the proposed program, it put tremendous pressure on the government to discontinue the project on the grounds that standardization of can sizes would

-require the production of additional machinery to make the cans. This would require manpower and metal, both of which were in scarce supply. That ended the proposal to standardize cans.

To my knowledge, the first proposal to standardize can sizes was made by Dr. Ruth Ayres before the Temporary National Economic Committee in 1939. Dr. Ayres testified that on one shelf, in one store, on one day, in Washington she found that there were 21 different containers of tomato juice representing 11 different brands selling at 15 different prices. Dr. Ayres found that of the 21 different containers, there were 17 different sizes when measured by size of container. She found that there were 16 different rates of price if you relate price of 10 ounces of tomato juice. So far as I know, there was only one direct result of all the testimony given at those hearings in 1939.

Among many other things I had testified that a 5¢ box of Nabisco crackers contained 1½ ounces and the 10¢ box of the same crackers contained only 2½ ounces, so I would get one-third more by buying two five-cent boxes instead of one ten-cent box. What was the result of this testimony? Did the company increase the weight in the 10¢ box? Certainly not! It reduced the weight of the 5¢ box to one ounce.

It was comparatively simple to compare the values in a 1½ ounce box with those in a 2½ ounce box. However, groceries are packed in so many different sizes of cartons and cans with such an unreasonable range of weights and quantities that it is almost impossible for the housewife to determine the cost per ounce or pound.

I firmly believe that (as I wrote in *\$\$\$ and SENSE*), "If you, the housewife, want to succeed in cutting your food bills, you must read the ads, the labels, and comparison shop." However, after I wrote the above, I realized that it's ridiculous to ask a housewife to compare the cost of say a 3 lb. 5 oz. box of detergent selling for 77¢ with a 5 lb. 3¼ oz. box selling for \$1.37.

I called the U.S. Department of Labor in Washington and asked whether they had a cost-weight table that I could use in my book to make comparison shopping easier. I was told "No, We use computers. Try the Department of Agriculture."

I called the U.S. Department of Agriculture and asked the Home Economics Department whether they had a cost-weight table. The answer was, "No, we use a computer."

Now, I ask, if the Government experts need a computer to figure the cost per ounce or pound, how can a housewife grapple with the figures she faces every time she goes to a supermarket? With the cost of food going up, the total cost of living going up and the cost of a higher education going up, how are we to maintain a decent standard of living, and give our children the kind of education they need? We can't even figure out how to get the best buys for our money.

I did get a cost-weight table for my book from Cornell University, but a cost-weight table is not the answer. Part of the answer is easy-to-read weights printed on each package in a place where they can be seen quickly. Another part of the answer is a reasonable range of weights and quantities in numbers of comparable units that make sense, so that a cost comparison can be made by the shopper.

I have spoken at meetings all over the United States and since October have spoken several time in New York City, Chicago, Boston, Detroit, Dayton, Pittsburgh and other cities. Everywhere, women are confused and ask why the Government does not do something to make buying easier. I have heard women say they cannot understand why the Government looks after farmers and small and large businessmen and yet pays no attention to the needs of the buying public. Women are particularly concerned about their inability to comparison shop for groceries.

In 1958 Senator Kefauver was concerned with this problem. He asked me to check the prices and weights of washing machine detergents in any supermarket in Washington. In one day, on one shelf, in one store, I found 40 different boxes. There were 29 different net weights and the 40 different boxes had twenty different prices. When we figured out the prices per pound we found there were 28 different prices per pound ranging from 22.1¢ per pound to 43.8¢ per pound.

In 1964, for my book, I made the same check in a supermarket in a Detroit suburb. I was hoping to find that conditions had improved, but they hadn't. This time there were 39 boxes with 28 different weights and 29 different prices per pound. Prices ranged from 17.2¢ per pound to 39.5¢ per pound.

I must admit there were two improvements in 1964 over 1958. The price of detergents had dropped and the net weight was easy to find on the package, usually on the top of the front label. In 1958, the net weight might have been anywhere, on the bottom, side or back of the label in small print. So the detergent industry is to be commended for at least printing the net weight where it can be seen. But how can it explain or excuse the fact that it has boxes with such fantastic weights as the following? 3 lbs., 2½ oz.; 3 lbs., 3½ oz.; 3 lb. 1¼ oz.; 2 lbs. 15 oz.; 15 oz.; 3 lbs. 5 oz.; 5 lbs. 4 oz.; 9 lbs. 13 oz.; 4 lbs. 1 oz.; etc. ad nauseum.

This is the kind of thing that drives housewives frantic. It does them no good to be able to read the net weight, if there are so many net weights and such difficult fractions that they cannot figure out the cost per unit.

Why does industry so strenuously oppose letting the consumer know how much she actually pays for a product? Is it because industry has something to hide? Certainly most housewives would rather pay at the rate of 17.2¢ a pound for detergent than 32.8¢ a pound for a similar detergent but how can they even take the time to check prices when there are 39 different boxes on the shelf?

I have heard that some representatives of industry claim that for them to change the sizes of containers would confuse the consumer. She would be unhappy at a change in the size of a container. Industry spokesmen say the housewife gets accustomed to a certain size can of applesauce and she'd be confused if the size were changed.

*Detergents and soaps for washing machines found in 1 supermarket*

1958

Brand	Selling price	Weight	Cost per pound
Dash.....	\$4.59	20 pounds, 1 ounce	22.6 cents.
Do.....	\$2.39	9 pounds, 13 ounces	25.4 cents.
Do.....	\$0.39	1 pound, 9 ounces	26 cents.
All.....	\$5.10	28 pounds	22.1 cents.
Do.....	\$2.49	10 pounds	24.9 cents.
Do.....	\$0.77	8 pounds	25.7 cents.
Instant Fels.....	\$0.77	3 pounds, 5 ounces	23.2 cents.
AD.....	\$0.77	3 pounds, 2 ounces	24.7 cents.
Do.....	\$0.33	1 pound, 3¼ ounces	27.1 cents.
Breeze.....	\$0.84	2 pounds, 6 ounces	35.4 cents.
Silver Dust.....	\$0.84	2 pounds, 6 ounces	35.4 cents.
Tide.....	\$1.87	6 pounds, 3¼ ounces	26.6 cents.
Do.....	\$3.99	16 pounds, 1 ounce	24.8 cents.
Do.....	\$0.81	3 pounds, 1¼ ounces	26.3 cents.
Do.....	\$0.34	1 pound, 4 ounces	27.2 cents.
Fab.....	\$0.81	3 pounds, 1¼ ounces	26.8 cents.
Do.....	\$0.34	1 pound, 4 ounces	27.2 cents.
Cheer.....	\$0.81	3 pounds, 6 ounces	24 cents.
Do.....	\$0.34	1 pound, 6 ounces	24.8 cents.
Do.....	\$1.87	6 pounds, 12 ounces	23.8 cents.
Rinso.....	\$0.81	3 pounds, 6 ounces	24 cents.
Do.....	\$0.34	1 pound, 6 ounces	24.8 cents.
Do.....	\$0.35	1 pound, 4 ounces	28 cents.
Surf.....	\$0.81	3 pounds, 3¼ ounces	25.2 cents.
Do.....	\$0.34	1 pound, 5 ounces	25.9 cents.
Orydol.....	\$0.84	3 pounds, 1¼ ounces	27.3 cents.
Do.....	\$0.35	1 pound, 4 ounces	28 cents.
Dreft.....	\$0.81	2 pounds, 12¼ ounces	29.2 cents.
Do.....	\$0.34	1 pound, 2 ounces	30.2 cents.
Vel.....	\$0.81	2 pounds, 5½ ounces	34.6 cents.
Do.....	\$0.34	15 ounces	36.3 cents.
Daz.....	\$0.84	3 pounds, 2¼ ounces	26.6 cents.
Do.....	\$0.35	1 pound, 4½ ounces	27.8 cents.
Do.....	\$0.35	1 pound, 4 ounces	28 cents.
Do.....	\$0.84	3 pounds, 1¼ ounces	27.3 cents.
Trend.....	2 for 35 cents.	12¼ ounces	22.4 cents.
Ivory Snow.....	\$0.84	1 pound, 15½ ounces	42.7 cents.
Do.....	\$0.35	12¼ ounces	43.8 cents.
Ivory Flakes.....	\$0.35	12¼ ounces	43.8 cents.
Do.....	\$0.84	1 pound, 15½ ounces	42.7 cents.

*Detergents and soaps for washing machines found in 1 supermarket—Continued*<sup>1</sup>

1964

Brand	Selling price	Weight	Cost per pound
Dash.....	\$4.22	20 pounds.....	21.1 cents.
Do.....	\$2.15	9 pounds 13 ounces.....	22 cents.
Do.....	\$0.61	3 pounds 2½ ounces.....	19.4 cents.
All.....	\$4.17	20 pounds.....	20.85 cents.
Do.....	\$2.15	9 pounds 13 ounces.....	22 cents.
Fluffy All.....	\$0.61	3 pounds 1 ounce.....	20 cents.
Do.....	\$0.75	3 pounds.....	25 cents.
Instant Fels Naphtha.....	\$0.74	3 pounds 3½ ounces.....	21.7 cents.
AD.....	\$0.71	3 pounds 2 ounces.....	21.4 cents.
Breeze.....	\$1.29	4 pounds 1 ounce.....	31.9 cents.
Do.....	\$0.78	2 pounds 6 ounces.....	32.8 cents.
Do.....	\$0.32	15 ounces.....	34.1 cents.
Tide.....	\$3.66	16 pounds 1 ounce.....	22.8 cents.
Do.....	\$1.28	5 pounds, 4 ounces.....	23.5 cents.
Do.....	\$0.74	3 pounds, 1 ounce.....	24.2 cents.
Do.....	\$0.31	1 pound, 4 ounces.....	24.6 cents.
Fab.....	\$0.74	3 pounds, 1¼ ounces.....	24.1 cents.
Blue Cheer.....	\$0.74	3 pounds, 6 ounces.....	21.9 cents.
Cheer.....	\$1.23	5 pounds, 12 ounces.....	21.3 cents.
Do.....	\$0.74	3 pounds, 6 ounces.....	21.9 cents.
Do.....	\$0.31	1 pound, 6 ounces.....	22.5 cents.
Rinso.....	\$0.99	5 pounds, 12 ounces.....	17.2 cents.
Do.....	\$0.59	3 pounds, 7 ounces.....	17.2 cents.
Do.....	\$0.26	1 pound, 6 ounces.....	19 cents.
Surf.....	\$0.24	1 pound, 4 ounces.....	19.2 cents.
Do.....	\$0.59	3 pounds, 2 ounces.....	18.9 cents.
Oxydol.....	\$1.29	5 pounds, 4 ounces.....	24.5 cents.
Do.....	\$0.79	3 pounds, 1 ounce.....	25.8 cents.
Do.....	\$0.32	1 pound, 4 ounces.....	25.6 cents.
Duz.....	\$0.81	3 pounds, 2¼ ounces.....	25.6 cents.
Super Suds.....	2 for 39 cents.	1 pound each.....	19.5 cents.
Ajax King.....	\$1.23	5 pounds, 3¼ ounces.....	23.5 cents.
Salvo.....	\$0.89	5 pounds, 2 ounces.....	17.4 cents.
Do.....	\$0.55	2 pounds, 15 ounces.....	18.8 cents.
Do.....	2 for 45 cents.	1 pound, 3 ounces.....	19 cents.
Ivory Flakes.....	\$0.33	13 ounces.....	27 cents.
Ivory Snow.....	\$0.79	2 pounds.....	39.5 cents.
Do.....	\$0.34	13 ounces.....	28 cents.
Cold Water All (liquid).....	\$1.99	3 quarts.....	66.3 cents. <sup>1</sup>
Whisk Liquid.....	\$1.27	½ gallon.....	63.5 cents. <sup>1</sup>
Do.....	\$0.67	1 quart.....	67 cents. <sup>1</sup>
Salvo Tablets, Jumbo.....	\$2.29	8 pounds, 1 ounce.....	28.5 cents.

<sup>1</sup> Cost per quart.

The truth is that industry is constantly changing sizes of containers with absolutely no fanfare and thinks nothing of it. As a matter of fact, this is one of the methods some companies use for raising prices on the unsuspecting consumer. They hold the price line but decrease the quantity by changing to a slightly smaller container.

When this is done, we hear nothing from industry about higher costs of packaging. I mention this because I have heard that some industry representatives claim that to change sizes of containers or to standardize sizes would be costly. Yet it is well known that if sizes were standardized and the number of sizes were decreased, storage problems would be decreased all the way down from the producer, wholesaler, and retailer to the consumer.

When industry representatives moan about the difficulties and the increased costs of changing from one container to another, I wonder how they explain the fact that most of the cooking and salad oil companies, almost simultaneously, changed from a plain to a fancy hipped bottle? Of course, we know that the oil companies used the new bottle to hide a decrease in the quantity of oil sold. Changing the bottle was a means of upping the price while holding the price line. This evidently is considered good business practice!

Another good business practice according to industry is to hide the net contents of the package. This is true not only of groceries, but of cosmetics of all kinds. It's extremely difficult to find the net weight on a candy bar, on boxes of cookies, on noodles, soap, talcum powder, skin creams and lotions.

It wouldn't cost the manufacturer a fraction of a cent to print the net weight where it can be seen on the package and in large enough type to be read without

a magnifying glass. The new Michigan Weights and Measures Law requires that net weights be on the front panel of the container, in contrasting ink, in specified large sizes of type. If the Michigan State Legislature can pass such a law, why not the United States Congress?

Why cannot the United States Congress stop the use of deceptive containers? I have in front of me right now two boxes of shredded wheat. The Nabisco Shredded Wheat box is slightly wider than Kellogg's. Both are clearly labeled. Kellogg's contains 15 biscuits and the weight is 12 ounces. Nabisco's contains 12 biscuits and contains 10½ ounces.

Why should the Nabisco box which contains less be slightly larger than the Kellogg's box which contains more? You may say, "since the net weight is clearly stated, the housewife can look at the two boxes and make a comparison."

But I ask you, gentlemen, have you ever looked at the cereal shelves in a supermarket? The number of varieties, brands, and sizes of containers is enough to make a shopper dizzy. Moreover, in normal practice, the retailer displays all of one brand in one section and another brand contiguous to it. In other words, the two brands of shredded wheat may be 30 feet apart, the Kellogg's with Kellogg's corn flakes and other cereals; the Nabisco with other Nabisco products. So it's not really easy for the housewife to make the best choice. She looks at two boxes that are apparently the same size and she selects the one that looks a little larger. This same situation exists in many other products. Dehydrated potatoes is another good example. In some cases, the larger package contains less than the smaller compact package.

Bottles and jars with thick walls, or bottoms appear to contain much more than they really do. Vanilla, cold cream, hair tonic, many products are deceptively packaged. The consumer needs protection from this kind of shabby packaging and only you in Congress can give it to her.

When I speak at consumer meetings or on TV or the radio, I bring with me examples of misleading packaging and bad labeling. For example, I have two bottles of baby oil, both apparently the same size. Purchased at a discount store, the Mennen's sells for 76¢ and the Johnson's for 75¢. The Johnson's looks like the better buy. It's 1¢ cheaper, but the Johnson's contains only 10 ounces while the Mennen's contains 12 ounces. Do the women I talk to check these weights? Many of them do not . . . they cannot even find the net weight on the Mennen's bottle. It's printed on the wrong side of the label and to read it, the purchaser has to read *through* the thick bottle filled with oil. Why Mennen's, which is the better buy, does not proudly state the net contents on the front of its label is something I don't understand.

I have read industry statements saying that housewives are happy with the status quo and don't want things changed. They say consumers trust industry and nothing should be done to destroy that trust.

May I say unequivocally that housewives do NOT trust industry. You get a group of women together, show them an item that is deceptively packaged, and it's like starting a prairie fire. You cannot stop them from talking. Everyone has innumerable stories of how she got "gypped." You may ask, "Why do not these women complain to the Congress where it will do some good?" Because, if they are workers, they are too busy or tired after hours to write their Congressman. If they are housewives, they're too busy cooking, cleaning, taking care of the youngsters and shopping, to write Washington.

And they excuse their lack of activity by saying, "A politician wouldn't listen to me complain about groceries. He wouldn't listen to me at all, period!"

Much testimony has been given at this hearing. Probably the most polished and most persuasive was given by industry representatives who are paid to devote full time to the problem and who are aided by lawyers, accountants and other experts. The best testimony a consumer can give is a guided tour through a supermarket.

I would urge every member of the committee to visit a supermarket and look around. The items on the shelves will speak for the consumer and the argument will be eloquent. Check around and see whether you can easily detect which is the best buy in tomato juice, corn flakes, cocoa, baking powder, or detergents. Then stop and think how much easier it would be if the net contents were printed in bold contrasting type on the main panel of the package. Think how much easier it would be if there were a reasonable range of weights and quantities.

You, the members of the Interstate and Foreign Commerce Committee, who are educated men, accustomed to dealing with large problems, surely must see

the difficulty that housewives face when trying to make an intelligent choice in the market place. You are the men who can ease the burden not only by making shopping easier but by helping those who need it, stretch their dollars by careful comparison shopping. By passing legislation with teeth in it, you actually are helping raise the standard of living for families who desperately need it. Consumers have been testifying on this problem and pleading for help since 1959. May this 86th Congress finally bring relief.

---

STATEMENT OF JOHN W. EDELMAN, PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS, WASHINGTON, D.C.

The National Council of Senior Citizens strongly urges passage of H.R. 15440, the truth-in-packaging bill.

As President of the National Council of Senior Citizens, an organization with 2,500,000 members of affiliated senior citizens' clubs from coast to coast, I can testify, both from the many reports I receive from the members and from my own experience while shopping, to the outrageous frauds practiced on the buying public through deceptive merchandising gimmicks commonly used at today's supermarket.

Millions of senior citizens, who must stretch meagre incomes to make ends meet, can ill afford being cheated as they now are by the planned confusion of the supermarket.

Senator Phillip Hart of Michigan, author of the truth-in-packaging bill that recently passed the Senate, has estimated the average family could save \$250 a year under an effective truth-in-packaging law.

With today's steadily rising food prices, we all would welcome any saving we can make at the supermarket, but what the millions of elderly poor might save could mean the difference between breaking even and being forced to ask for charity in a great many cases.

To show what I mean, I cite the fact that close to half of those 65 or over, that's nearly 9,000,000 men and women, have incomes of less than \$1,000 a year and this in the greatest period of prosperity our country has known.

Rising prices have already caught up with last year's modest increase in Social Security retirement benefits. President Johnson has said he will support an additional increase in retirement benefits, but under the most favorable circumstances, this may be some distance off.

In the meantime, many elderly poor must forage for food in garbage cans—a fact I can readily document, and gather empty soft drink bottles and old newspapers to keep alive.

So I tell you in all sincerity that truth-in-packaging legislation, if enacted immediately, could help a great many elderly poor live better by enabling them to buy economically.

For older persons, whose vision is not as sharp as it once was, the bewildering array of different sized packages, often containing odd weights or measures, with information on the contents printed in fine type that even baffles those with perfect eyesight, comparison shopping is now impossible.

If you think I exaggerate, I cite a Michigan shopping experiment in which 33 college trained housewives went to the supermarket to buy 20 identical items. They chose the most economical product in slightly more than half the cases. Not one in this group could pick the cheapest detergent and only one of the 33 found the most economical bleach. As a result, these 33 women paid 9 percent more than was necessary for the 20 items they bought.

How much more difficult must it be for the elderly shoppers to figure out the most economical purchases when they go to the supermarket?

The government has not been entirely oblivious to this problem. As Mrs. Esther Peterson, Special Assistant to President Johnson for Consumer Affairs, pointed out in a speech before Consumer Assembly '66, held earlier this year, the U.S. Department of Agriculture has come up with a handy table of designations for buyers of one product, canned olives. This table shows that when you buy canned olives, you have to know that the "jumbo" size is larger than the "giant" size, which in turn is larger than the "mammoth" size. But, bigger than the "jumbo" size is the "colossal" size.

However, "colossal" is smaller than two other sizes, the "super colossal" and that ultimate of ultimates, the "special super colossal."

Incidentally, "small", "medium", and "large", the sizes we used to buy, now stand for the three smallest sizes of canned olives.

This is just one example of deceptive packaging. The deception is general in the supermarket. It is not something indulged in by just a few irresponsible firms on the fringe of the business community. The biggest corporate suppliers of products sold in the supermarket use deceptive packaging to take advantage of shoppers.

Perhaps, there are Americans who can afford the extra price they must pay because of merchandising trickery, but I submit this imposes on the elderly poor, who must perpetually go without to make ends meet, a cruelly unfair "confusion" tax—a tax levied by corporate suppliers to add to their already ample profits by "bamboozling" the aged.

Opponents of a truth-in-packaging law are trying to scare buyers with baleful predictions that such a law would oblige supermarket suppliers to raise their prices even faster than they are raising them now. In their high pressure propaganda, seeking to block a truth-in-packaging law, these opponents conveniently overlook the substantial savings supermarket buyers could realize under such a law.

Opponents try to claim the changes supermarket suppliers are constantly making in weights, measures and packaging of their products are in answer to public demand. I know that our senior citizens have no desire to pay extra so they can buy food and other supermarket products in more and different looking packages.

Today approximately \$10,000,000,000 or a fifth of all consumer expenditures go for the package we throw away when we have used the contents. Supermarket suppliers have one purpose in frequently changing the packaging of their products—to prevent shoppers from comparing prices and patronizing the supplier who offers the best product at the lowest price.

A truth-in-packaging law is urgently needed to restore to the buyer the right to make his comparison of supermarket products on the basis of clear and easily read weights, measures and content information. Today's deceptive packaging has robbed them of this right.

Again, on behalf of 2,500,000 members of the National Council of Senior Citizens, I ask early enactment of H.R. 15440, the House truth-in-packaging bill.

---

#### NATIONAL COUNCIL OF SENIOR CITIZENS, INC., WASHINGTON, D.C.

#### UNANIMOUSLY APPROVED RESOLUTION ON CONSUMER PROBLEMS

Because America's older people live, in the main, on inadequate fixed incomes, the National Council of Senior Citizens is deeply concerned that each dollar of that income provide a maximum of goods and services and that the elderly, as consumers, be adequately protected.

Recent testimony before the Senate Banking Subcommittee as well as other Congressional committees have indicated a growing trend toward deceptive packaging of foods and household products, items on which the elderly spend a substantial portion of their incomes. Such practices make it exceedingly difficult to compare prices and quantities of packaged goods, and work a particular hardship on senior citizens. Because it will help avoid confusion, encourage fair packaging and labeling, and protect the shopper against deception, the National Council of Senior Citizens strongly urges the United States Congress to approve the Fair Packaging and Labeling Act (S. 985) in this session of Congress.

Similarly, recent evidence of disreputable practices involving concealment of unduly high interest rates on installment sales and other forms of consumer credit require remedial legislation to protect the consumer who uses credit. For the elderly, purchasing major items and appliances on credit is often the only way those items can be obtained. The National Council of Senior Citizens therefore urges the early enactment in this Congress of the Truth in Lending Act (S. 2275) that would require lenders to state the full cost of credit simply and clearly and to state it before any credit contract is signed.

We believe that these two pieces of legislation can provide a whole new area of consumer protection in a way that would be more beneficial to older people and all others living on limited incomes.

## STATEMENT OF W. B. HICKS, JR., EXECUTIVE SECRETARY, LIBERTY LOBBY

Mr. Chairman and members of the committee, I am W. B. Hicks, Jr., Executive Secretary of Liberty Lobby. I appear today on behalf of the 175,000 subscribers to our legislative report.

Mr. Chairman, Liberty Lobby is opposed to this bill. First, we are opposed to its basic concept. We feel that this concept is both demeaning to the American voter in his role as the consumer, and dangerous to the American voter in his role as a producer. On the one hand, the consumer is considered a fool; and on the other hand, as a producer, he is considered a charlatan or a "con man."

As a consumer, this bill proposes to protect the American voter from his purely imaginary incompetence—an incompetence that does not exist at all—and at what price? At the price of a mushrooming bureaucracy which adds to the cost of the products we need for our everyday lives?

This bill is supposed to save the American consumer millions of dollars per year. Nowhere is it mentioned in the bill what the allowable expense of HEW is to be in the enforcement of this bill. Why not? Because it will cost more than it saves? Has this committee requested an estimate of what it will cost to enforce this bill?

And what of the American voter as a producer? Has any study been made of the number of American voters who will lose their jobs and their businesses because of their inability to compete in a market that is strictly standardized and controlled by bureaucrats? A market that has no place for the attractive package? The convenient innovation?

Even one who has no preconceived notions about the inviolability of the market place by government bureaucrats would have to question the wisdom of this bill on such purely practical and pragmatic grounds.

Secondly, Liberty Lobby opposes this bill because it demeans the Congress of the United States.

This bill goes to extreme lengths to lay out the so-called "guidelines" by which labels, measurements, packages, etc., are to be considered. It reads like a "promulgation," (to use the term used by the bill) itself.

The bill carefully explains that if it had been too strict on some, or too lenient with others, then the bureaucrats have the power to alter it to fit the occasion. We suppose that this is necessary to a dictatorship by bureaucrats. But why, in that case, should there be any standards at all in this bill?

Why doesn't the Congress instead simply issue a law to the effect that the Secretary of Health, Education, Etcetera, shall henceforth regulate the packaging industry? As Liberty Lobby sees it, that is the total effect of this bill.

Thank you.

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C., July 13, 1966.

MR. ARTHUR O. KREUTZER,  
*Executive Vice President,  
National LP-Gas Association,  
Chicago, Ill.*

DEAR MR. KREUTZER: This is in reply to your letter of July 8, 1966, with regard to S. 985, H.R. 15440, and similar bills.

It is my understanding that Senator Magnuson in the course of the Senate floor debate indicated that it was the intention of the Committee to exempt refillable ICC cylinders used for liquified petroleum gas from the provisions of S. 985.

In writing to you it is my purpose to advise you that I am of the opinion that H.R. 15440 and similar bills should not be applicable to such cylinders and it is my purpose to clarify this in the legislative history of this legislation. It would be my purpose to place your letter and my reply in the hearing record on this legislation.

If you believe that in addition to this exchange of correspondence you should desire to testify before the Committee, Mr. W. E. Williamson, Clerk of the Committee, will be glad to arrange for a suitable time.

Sincerely yours,

HARLEY O. STAGGERS,  
*Chairman.*



NATIONAL LP-GAS ASSOCIATION,  
Chicago, Ill., July 8, 1966.

HON. HARLEY STAGGERS,  
Chairman, House Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D. C.

DEAR CONGRESSMAN STAGGERS: The National LP-Gas Association is concerned with S. 985, H.R. 15440 and similar bills relating to the packaging or labeling of consumer commodities, because of possible unintentional coverage over the refillable ICC cylinders, or containers, used by this industry in supplying liquefied petroleum gas. We understand that your Committee will soon conduct hearings on this legislation and we will appreciate an opportunity to appear before the Committee for clarification of the unnecessary problem presented to this industry.

This association speaks for the liquefied petroleum gas industry. It is the industry's national association composed of manufacturers of the product, equipment and appliances, and distributors and dealers delivering this commodity to retail purchasers. Its over 3600 members, represent 85% of the business and include 39 affiliated state associations. Liquefied petroleum gas (LP-gas) is a fuel principally used for household and agricultural purposes in such applications as cooking, water heating, household heating, etc. It is commonly known as *bottled gas*, butane, propane and by a variety of trade names.

The pending legislation employs such all-inclusive language in the definitions so that while we believe coverage is not intended, the legislation in present form could be interpreted to cover steel containers used by this industry in delivering LP-gas. In explanation of this situation, LP-gas is distributed and sold in several ways by bulk tank trucks, or through a "package" steel cylinder or container delivery. When delivered in this container to the consumer's premises, the actual sale may be of the product in the refillable container, or by subsequent metering of this product as it leaves the container. In this latter circumstance there is no "sale" in the "package" but there is "distribution" and "delivery" the terms employed in the legislation. Again, these containers are used interchangeably for a variety of usages, including commercial and industrial applications. Consequently, labeling of the container will serve no useful purpose, but create a confusing and unnecessary and costly handling burden on government and industry alike.

Further, these containers are constructed and labeled in accordance with ICC regulations, that include the name of the contents, other descriptive language, and precautionary information. Additional labeling would detract from this essential data.

The definitions of the terms "consumer commodity" and "package" in the legislation may be broad enough to include this container. Again the description of our commodity, or its container, will not fall within the language of the exclusions specified under these definitions. We, therefore, respectfully request that any unintentional coverage over ICC containers used for liquefied petroleum gas distribution be prevented and the legislation clarified by either—

1. placing among the exclusions under the definition of "consumer commodity" "( ) any commodity for use as a fuel", or
2. placing among the exclusions under the definition of "package" "( ) containers subject to the provisions of the Act of September 6, 1960 (62 Stat. 738, 74 Stat. 808; 18 U.S.C. 834).

We, therefore, ask Committee consideration of this problem, urge clarification to eliminate coverage over liquefied petroleum gas or liquefied petroleum gas containers, and request time to present this problem to the Committee in greater detail as may be necessary.

Respectfully yours,

ARTHUR C. KREUTZER,  
Executive Vice President.

NATIONAL CONFERENCE ON WEIGHTS AND MEASURES,  
Washington, D.C., July 20, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The attached resolution was agreed to unanimously by the 51st National Conference on Weights and Measures on July 15, 1966, in Denver, Colorado.

In compliance with the terms of the resolution, a copy is being transmitted to you.

Sincerely yours,

J. ELLIS BOWEN, *Chairman.*

#### RESOLUTION ON FAIR PACKAGING AND LABELING LEGISLATION

Whereas the National Conference on Weights and Measures has long provided leadership in a cooperative State-Federal-industry effort for nationwide uniformity in requirements for packaging and labeling of commodities in the interest of consumers; and

Whereas under the leadership of the National Conference on Weights and Measures, a majority of the States have adopted similar laws and regulations in the cause of uniformity, and many industries, at great expense, have complied with these laws and regulations, especially as they apply to labeling; and

Whereas in 1963, the 48th National Conference adopted a resolution of appreciation for congressional interest in "Truth in Packaging" legislation; and

Whereas U.S. Senate Bill S. 985, "Fair Packaging and Labeling," as reported favorably by the Senate Committee on Commerce in May 1966 and subsequently passed by the Senate, in general is consistent with the aims and efforts of this Conference: Therefore, be it

*Resolved*, That this 51st National Conference on Weights and Measures, duly assembled in Denver, Colorado, this 15th day of July 1966, hereby endorses legislation on fair packaging and labeling to attain the goals parallel with this Conference; and be it further

*Resolved*, That this Conference endorses enactment by the Congress of S. 985 as passed by the Senate, but recommends, in order to facilitate the accomplishment of the bill's objectives, certain technical language changes, as follows:

1. Section 12, pertaining to the bill's effect on State law, should be clarified to reflect the view of the Senate Committee on Commerce, as published in the Report of the Committee, that "the bill is not intended to limit the authority of the State to establish such packaging and labeling standards as they deem necessary in response to State and local needs." Specifically, the Conference recommends the substitution of the words "are inconsistent or in conflict with" for "differ from" in said Section 12. This would make absolutely clear that State consumer-oriented weights and measures laws are not nullified, whether differing or not from Federal laws or regulations, if these are necessary for the protection of the citizens of the State and do not conflict with Federal laws or regulations so as unreasonably to affect the flow of products in interstate commerce.

2. The requirements for the declaration of net quantity of contents on the label under Section 4(a)(3)(A) should be expressed in terms of the largest whole unit or decimal fraction thereof, rather than being restricted to ounces or whole units of pounds, pints, or quarts. Declarations of quantities of length, area, and numerical count should be included in such requirements.

3. Since the words "accurately stated" in Section 4(a)(2) could be construed under present custom and usage to allow no measurement inaccuracy whatsoever, the Conference recommends adding the phrase "as is consistent with good packaging practice" after the words "accurately stated."

4. The parenthetical expression in Section 4(a)(3)(B), "(by typography, layout, color, embossing, or molding)," should be deleted, since the three critical points with respect to conspicuousness are type size, color contrast, and free surrounding area.

and be it further

*Resolved*, That copies of this resolution be transmitted to the appropriate committee or committees of Congress and to the Secretary of Commerce.

YOUNG & RUBICAM, INC.,  
New York, N.Y., August 16, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,*  
*House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: We are writing in reference to the "fair packaging and labeling" legislation (notably H.R. 15440 and S. 985) currently being considered by the House Committee on Interstate and Foreign Commerce.

Young & Rubicam, Inc., as a member of the marketing community, wishes to go on record with the Committee:

1. as continuing to favor the stated aims of the proposed legislation: "... preventing the use of unfair or deceptive methods of packaging or labeling ...", and
2. as being extremely concerned that much of the legislation, as drafted, may tend to hinder legitimate competition and render an ultimate disservice to the consumer of the commodities concerned.

You and your committee are probably more familiar than we with the merits and demerits of the many criticisms voiced against present and past drafts of "fair packaging and labeling" bills. We shall not, therefore, recap all of the arguments of the bills' opponents; but we do want to state our general agreement with the propositions that (1) the present bills tend to duplicate the ability of existing laws to control deceptive and unfair methods of competing via package and label, and (2) the new methods of control offered by these bills could unduly stifle competition by encouraging excessive standardization of competitors' packages and labels.

We should like to add only some thoughts on the subject of competition . . . thoughts which help explain why we oppose the kind of legislation in question, and which may help you in deciding whether revisions are needed in the current bills and whether new packaging legislation is, in fact, required.

First, we believe strongly that competition takes many forms in the market place. The successful marketing of a product can be effected by any one or more of many elements, including product composition and quality, packaging, advertising, sales promotions, product publicity, price . . .

In all of these areas of marketing, the alert competitor is constantly making decisions in an effort to win increasing preference for his product among consumers. Thus, in the area of packaging alone, he must decide what combination of sizes, shapes, colors, quantities, etc., will best obtain—and retain—users in a free market place. As a result, price emerges as but one element among many in determining the ultimate success of a competing product . . . and even in the area of pricing, important decisions must be made and reviewed concerning which choices are most desired by consumers (e.g., for some consumers, in certain markets, at certain times, low individual unit cost may be desired; for others, economy per ounce may be more important).

It is our opinion that the free market place continues to be the best arena in which to make these myriad marketing decisions . . . and that the American consumer continues to be the best judge of the decisions made by each individual marketer.

In contrast, we feel that the legislation proposed tends to prejudice and over-stress the importance of price (especially "price per ounce") to consumers, and also—if enacted—would prove far too costly to consumers in terms of eliminating variety of choice in packaging appeals and pricing appeals.

Second, we see in this proposed legislation the danger of a myopic concentration on the initial purchase of a product by a consumer.

If you adopt this "single purchase focus," it is understandable that you might well look upon price as a competitive tool overriding all others, and that you might tend to see but one safeguard against purposeful confusion of consumers in the area of "per ounce" price comparison: namely, governmental control and standardization.

If, however, you recognize—with us—the far greater importance of repeat purchases to the success of consumer packaged goods, it is hoped that you will recognize also the importance of the many elements of marketing other than price competition, and the presence of a highly effective existing safeguard: namely, free and intense competition for a consumer's repeat purchase and brand preference . . . resulting from satisfaction after use of a given competitor's product.

Finally, we wish to stress renewed recognition of the fact that manufacturer is pitted against manufacturer in an attempt to better satisfy the consumer.

The thought seems obvious. We stress it, however, because we have detected an unhappy tendency among proponents of marketing "controls" to view manufacturers as pitted against consumers. Such an orientation, especially if it envisions the large corporation as trying to persuade the busy housewife to make an initial purchase via price inducement and via obscuring of price comparison, is bound to help foster a heartfelt need for additional governmental consumer "protection."

If, however, you see—as we do—astute manufacturers vying with each other to win a consumer's loyalty, we think you will recognize the potent incentive, already existing, to minimize confusion in a consumer's choice of brand or size and to maximize the consumer's satisfaction . . . resulting from the ability of the product once used to measure up to the claims made by all elements of the marketer's promotional efforts, including the package's appeals.

In summary, we continue to oppose deception and unfair methods in marketing . . . whether they be found in labeling, advertising, pricing, or promotional offers . . . but we oppose with equal vigor any legislation or regulation which penalizes honest competition by encouraging undue compulsory standardization of competing products' marketing efforts.

We urge, therefore, that existing legislation (notably Section 5 of the Federal Trade Commission Act and the Food, Drug and Cosmetic Act) be enforced to prevent instances of deceptive or unfair packaging and labeling . . . and that the current "fair packaging and labeling" bills be carefully reviewed again to guard against their (1) unfairly creating distrust of honest manufacturers, and (2) unnecessarily promoting additional standardization and thereby reducing the marketing alternatives available to sellers and the purchasing choices available to America's consumers.

Respectfully,

WILLIAM J. COLIHAN, Jr.,  
*Executive Vice President.*

BENTON & BOWLES, INC.,  
*New York, N.Y., July 22, 1966.*

HON. HARLEY O. STAGGERS,  
*House Office Building,  
Washington, D.C.*

DEAR SIR: It is my understanding that the "Fair Packaging and Labeling" bill (S. 985) is scheduled to be considered by the House Interstate and Foreign Commerce Committee the week of July 25th. I would like to urge that several provisions of this bill be revised, because they seem unreasonable and unworkable. Specifically, I have in mind the following:

The section that would require a separate label statement of the quantity of contents in terms of ounces.

The section that would authorize regulations to establish type-size for quantity declarations on labels of consumer products.

The section that would prohibit addition of any words qualifying the quantity declaration whether or not they would tend to deceive or exaggerate the quantity. This would conflict with provisions of the Model State Weights and Measures Regulations, which prohibit only those qualifying words that would deceive or exaggerate the contents.

The section that would permit unlimited regulations to require ingredient information on the label. Full disclosure of closely-guarded formulas may be required.

The section that would permit FDA and FTC to adopt additional regulations for particular product lines to prevent deception of consumers or to facilitate price comparisons (specifying a limited number of weights and sizes in which a particular product can be packaged). This provision would be interpreted by the regulatory agencies in light of their own views, with no restraint on their authority to decide whether or not regulations are necessary.

The section authorizing regulations of cents-off and economy size label statements, whether or not the practice is used deceptively by the manufacturer or retailer. This provision, which disregards existing authority of the FTC to police this area by prohibiting unfair or deceptive acts or practices, would outlaw a legitimate marketing tool especially useful in the introduction of new and innovated products.

The section that would set up a complicated procedure for the adoption of regulations to establish weights and quantities in which a product must be packed.

It appears to me that these provisions would impede legitimate merchandising practices which do not mislead or deceive the consumer, increase product costs to consumers by prohibiting legitimate sales promotion practices, inhibit the development of new products and product innovations; give FTC and FDA un-

limited and undefined powers over product labeling and packaging, and duplicate regulations already in the statutes.

I would appreciate it if you would convey these thoughts to the members of your committee considering this bill.

Thank you.

Sincerely,

L. T. STEELE,  
*Executive Vice President.*

CUNNINGHAM & WALSH, INC.,  
*New York, N.Y., July 28, 1966.*

HON. DONALD J. IRWIN,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. IRWIN: As a resident of your district, I would like to seek your support for the elimination of Section 5 of H.R. 15440 and S. 985—the so-called “fair packaging and labeling” bills—now before the House Interstate and Foreign Commerce Committee. I urge you to make my views on this legislation known to your colleagues on the House Committee.

Section 5 of these bills would give unlimited discretionary powers to the Federal Trade Commission and the Food and Drug Administration in the regulation packaging and labeling” bills—now before the House Interstate and Foreign distinguish between “unfair and deceptive” packaging and labeling practices and those which *do not* deceive or mislead.

Packaging innovations and pricing promotions, both of which could be banned under these provisions, are among the most important marketing tools a manufacturer has going for him when he tries to launch a new product. To penalize a manufacturer who *legitimately* employs these tools in order to halt the abuses by a few is unreasonable and unnecessary. It is not good lawmaking; it is not good for the economy, and, in my opinion, this is not the sort of “protection” the consumer wants or needs.

Just last month, Donald Turner, Antitrust Chief of the Department of Justice, expressed concern that some advertising and marketing practices were barriers to small manufacturers trying to enter the marketplace. Certainly market entry would become *extremely* difficult if “cents-off” and similar price promotions and the freedom to package his new product in “introductory” sizes were denied the producer.

Most important is the fact that these provisions would increase product costs to consumers, and I do not believe that this is what the consumer “protectionists” want. I know that this is a kind of protection many American families cannot afford. And neither can our economy. These proposals would lead to a slow-down in development of product improvements and conveniences which I and most of the public *do* want.

Instead of broadening FTC's and FDA's authority to stop *all* special pricing practices and to set up standardization of packaging, the Congress should direct these administrative agencies to use the powers they already possess to stop any false and misleading practices that exist.

It occurs to me that the Congress has a responsibility to draw a line between legitimate and illegitimate practices. Further, it has an obligation to exercise its lawmaking authority instead of abdication and deferring that right to the Executive Branch. This it can do by drastically changing the provisions in Section 5 of Senator Hart's and Representative Staggers' bills.

Your careful consideration of these views will be genuinely appreciated.

Sincerely,

CARL W. NICHOLS, *President.*

COMPTON ADVERTISING, INC.,  
*Los Angeles, Calif., July 21, 1966.*

HON. J. ARTHUR YOUNGER,  
*House Office Building, Washington, D.C.*

DEAR MR. YOUNGER: As a company with a deep concern for matters affecting the marketing of consumer goods in a free economy, we feel obliged to express to you our views on the Hart Packaging and Labeling Bill. We consider the bill unnecessary and alien to our American system of free enterprise.

We believe it is unnecessary because existing laws, the Federal Trade Commission Act and the Food, Drug and Cosmetic Act, provide full protection to the consumer against unfair or deceptive practices in packaging and labeling. It is also unnecessary because comprehensive research (by such organizations as Opinion Research Corp., Nation's Business and Alfred Poliz Research, Inc.) has shown a very high degree of consumer satisfaction with the packaging and labeling of consumer goods. Thus, the bill is not in answer to any problem felt by consumers.

The Hart Bill is a serious concern to a believer in our American system of government and free enterprise for several reasons:

1. It would authorize law-making by appointed administrators rather than elected representatives and would place law enforcement in the hands of the same administrators who made the law. This would seem clearly to violate our traditional concept of the separate functions of the legislative and executive branches of government.

2. It inhibits legitimate sales promotion devices which have proven valuable to both the manufacturer and the consumer. For example, the "cents off" label, which represents a real moneysaving opportunity to the consumer and a way for the manufacturer to reach new users for this product, would be banned under the Hart Bill.

3. It unrealistically proposes to standardize weights of competing products to avoid fractional ounces. This would remove packaging economies by companies making products of various densities and weights, and would result in increasing consumer prices with no offsetting benefit to the consumer.

4. It restricts the ability of manufacturers to develop new packages with features desired by consumers, such as greater convenience and attractiveness. In certain cases, it could impose problems in the development of new products.

In sum, we believe the Hart Bill offers no positive benefits to the American public and embodies the serious negative enumerated above. We respectfully hope you will give consideration to these views, and that you will not support this proposed legislation.

Very sincerely yours,

RICHARD H. HURLEY,  
*Senior Vice President.*

BOND & STARR, INC.,  
*Pittsburgh, Pa., July 14, 1966.*

HON. HARLEY O. STAGGERS,  
*House Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.*

DEAR SIR: It is my understanding that the Interstate and Foreign Commerce Committee will hold hearings on the Fair Packaging and Labeling Bill (S. 985) this month.

Sections 4 and 5 of this bill will make it most difficult for many manufacturers to promote their products in a legitimate and fair manner to potential customers. The effect of these provisions will be to increase product costs to consumers by prohibiting legitimate sales promotion practices and tend to inhibit the development of new products and product innovations.

I contend that the consumer is adequately protected now without more legislation. In support of this, I quote Glenda McGinnis, food and equipment editor for Woman's Day. She told the National Food Marketing Commission that "I can count on my fingers the complaints we have had from readers on the subject of food products, packaging, etc., in the more than 25 years I have been in my present job. Readers often telephone and ask for information or help, but not to complain about products."

Willie Mae Rigers, director of the Good Housekeeping Institute told the Food Marketing Commission that there is more information available today than ever before and said: "there is no excuse for any woman who can read and wants to be informed, not being informed."

I hope you will consider these statements when this legislation comes before you for deliberation and will vote against the entire bill or at least against the inclusion of sections 4 and 5.

Respectfully yours,

GEORGE L. BOND, JR.,  
*President.*

GREY ADVERTISING, INC.,  
New York, N.Y., August 12, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: Last week, when I talked to the Speaker of the House about the many problems presented by H.R. 15440 and S. 985, the "fair packaging and labeling" legislation, he suggested my writing to you and other members of your committee.

I hope, Congressman, that you will accept what I say as constructive and factual. While Speaker McCormack cannot vouch for my words, I am certain he will vouch for my integrity.

Briefly, experience of nearly half a century in advertising and marketing leads me to a number of conclusions pertinent to the proposed legislation.

1. Public confidence and truthfulness already are keystones on which leading manufacturers of consumer products have built their success. Without these attributes, they could not long survive in the full light of national distribution, consumer usage, and advertising. In itself, this fact has served to protect the consumer.

2. The highly-competitive market place has brought with it the need for quality and excellence, in addition to the constant challenge to improve. The records are filled with examples of those products which did not meet the test and ultimately were surpassed and obliterated when consumers discovered a better product in which they could place their confidence.

3. Standardization of weight, quantities, sizes and shapes and new regulations governing merchandising practices will seriously impede the very system which has built this enviable record of "consumer protection" through the known brand. The name brand, readily distinguishable to the consumer, would lose a part of its identity, thus creating far greater confusion in the consumer's mind.

4. Present law clearly prohibits deception, whether in packaging or labelling. The result today is that deceptive practices are minuscule. If the goal is to prohibit unfair and deceptive packaging and labelling, the major need is to enforce present statutes.

I am sure you must be aware that extensive research and testing are conducted by manufacturers with consumers to insure that each package will receive the most positive response in the market place. The reason is simple: manufacturers always have been interested in "consumer confidence".

While we do not contend that the system is perfect, we believe it has demonstrated its superiority on the basis of achievements and the promise it gives to improve itself in the future. If there is dissatisfaction, we too would like to know about it so that it may be eliminated.

In summary, I earnestly believe the proposed legislation cannot help, but most likely, will work against protecting the consumer.

Sincerely,

LAWRENCE VALENSTEIN,  
*Chairman, Executive Committee.*

SAN JOSE ADVERTISING CLUB,  
*San Jose, Calif., July 29, 1966.*

HON. J. ARTHUR YOUNGER,  
*Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D.C.*

DEAR MR. YOUNGER: I am writing this as Legislative Chairman of the San Jose (California) Advertising Club to express the concern of this group in regard to the so-called Hart Packaging Bill, H.R. 15440, along with its companion bill, S. 985, which recently passed the Senate in an amended version.

Restricting comments to H.R. 15440, it is our observation that many of the components of this bill as relating to labeling, statement of net contents, name of producer, listing of ingredients, etc., are already covered in regulation of the FTC, the FDA, or laws of most of the states. Hence many provisions in the bill represent duplicate legislation.

Beyond this, however, we are concerned about the proposed regulations which would result in standardized containers for (primarily) food and drug products. Conformity to this requirement would mean many changes in packaging, often of slight consequence. As an executive in an advertising agency, I am well aware of the tremendous costs involved in a change of package, having gone through this with some of our clients. For the small producer, the costs could

be crippling. On a nationwide scale, the costs would inevitably have to be retrieved through higher prices to the consumer.

Furthermore, distinctive packaging is an important factor in successful merchandising. It is especially important in the introduction of new products, or to intensify the consumer's awareness of new developments in familiar products. It may be of paramount importance as an aid to the small producer who is attempting to introduce a new product against heavy competition. America was built on the energy and initiative of small business men. This is our basic national philosophy—free enterprise—as compared with the collectivism of opposing political concepts. We would all agree that packaging must not be deceptive, but if a producer is ingenious enough to develop a package that is unique, distinctive and attractive to the public, he has forged an important merchandising tool which he should be entitled to use.

We are further concerned about the broad powers granted the FTC and the FDA in implementing this legislation. Their responsibilities, as laid out, are indeterminate and unlimited, leaving them pretty much to play it by ear. With all deference to the many fine gentlemen who serve on these commissions, we would all grant, I am sure, that there are among them a sprinkling of dedicated zealots whose eagerness to save the world closes their ears to the voices of more reasonable men.

Much legislation of the type proposed springs, I suspect, from someone's deep conviction that the American business man is basically a liar and a cheat—a premise with which neither of us, I am sure, will agree. Most of them are honest, God-fearing citizens who are trying to make an honest living and who are just as concerned about their fellow men as are the legislators whom they choose to represent them. As for the "deceived" housewife—don't worry! She's a pretty smart cookie and can figure just as well as anyone how many ounces she's getting for how much. And if she wants to buy it in a non-standard purple package, Lord love her, why not?

As a housewife myself, as well as a business woman, I earnestly urge you to vote NO on H.R. 15440 in its present form. As Legislative Chairman of the San Jose Advertising Club, I would register their strong support of the objections voiced by the Advertising Association of the West and the Advertising Federation of America in their joint letter to Committee Chairman Staggers on July 26, 1966.

Your consideration will be appreciated.

Very truly yours,

Mrs. GERTRUDE B. MURPHY,  
*Legislative Chairman, San Jose Advertising Club.*

---

WOMEN'S ADVERTISING CLUB,  
*Portland, Oreg., August 25, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Interstate and Foreign Commerce Committee,  
Washington, D.C.*

DEAR SIR: In concerted and individual action, the members of the Women's Advertising Club of Portland, Oregon have filed with their Oregon Senators and Representatives their protest of the passage of H.R. 15440—The Packaging Bill.

To make you completely cognizant of their action, we are sending you a copy of the Western Union telegram sent to each of the elected Oregon Representatives, as well as a copy of the letter sent by me—the President of our organization—to each member of our club.

Sincerely,

EVELYN METZGER, *President.*

[Night Letter]

AUGUST 11, 1966.

HON. AL ULLMAN,  
*Washington, D.C.*

The 91 members of the Women's Advertising Club of Portland, Oregon, protests unanimously the packaging bill, H.R. 15440, now under consideration and hopes that you as a Representative of the people of Oregon will not only vote against it, but work diligently against it.

EVELYN METZGER, *President.*  
WOMEN'S ADVERTISING CLUB,  
*Portland, Oreg.*



Currently there is a bill pending in the United States House of Representatives called: H.R. 15440—The Packaging Bill.

Bluntly stated, it is one of the most dangerous bills ever considered, for it could affect the entire economy of the United States of America and destroy the right of businesses to do business WITHOUT MINUTE BUREAUCRATIC CONTROLS!

There is much confusion about this bill and its implications, by the public and even by the House Committee that is handling it. Mostly it is being pushed by so-far unidentified groups that call themselves "consumer protectors", who—if they have their way—would eventually "protect" the consumer from even a free choice of selection of everyday products!

This letter has one purpose: To urge you to write to your Senators and your Representatives not only to URGE, but INSIST that they approach this bill with more knowledge than they presently have about it, and to defeat its passage because there are already TWO GOVERNMENT BUREAUS that regulate the same things—packaging, labeling and advertising! They are the Federal Trade Commission and the Federal Drug Administration—both of whom—by their own admission—ALREADY HAVE SUFFICIENT AUTHORITY UNDER EXISTING LAWS TO FULLY PROTECT THE PUBLIC IN THIS AREA.

The proposed Legislation provides for the delegation of *excessive authority that would put creative packaging and labeling in a straight jacket with no tangible benefits to the consumer . . .* but would inevitably result in higher prices to the consumer through two channels: Huge expenses to the Manufacturer for label changes and taxes to support another unnecessary Government Bureau.

Write to your Congressional Representatives today—Let them know how vital is the defeat of H.R. 15440!

EVELYN METZGER, *President.*

PREMIUM ADVERTISING ASSOCIATION OF AMERICA, INC.,

*New York, N.Y., July 29, 1966.*

HON. HARLEY O. STAGGERS,

*Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: My name is William C. Battle. I am President of the Premium Advertising Association of America, Inc. and I offer testimony in its behalf for the Hearing Record.

The PAAA was organized more than 50 years ago to protect and to advance the interests of those engaged in the practice of premium merchandise advertising. Generally speaking, premium advertising involves the gift of a premium article or service as an inducement to the purchase of the advertised product, or as an incentive or reward to dealers, salesmen, etc. An infinite variety of promotional devices originates from this basic principle. The industry involved approximates 3 billion dollars in total sales, and it is principally composed of several thousands of small businessmen, of whom some 500 are members of the PAAA.

According to the Association Code of Ethics, our member companies dedicate themselves to principles of ethical and lawful business conduct, and by observing the highest standards of commercial advertising they hope to benefit the consuming public. More particularly, such premium advertisers are pledged to make a legitimate premium offer, which is duly executed, and which is free of any fraud, deception, or lottery.

Premium advertising is recognized in textbooks on advertising, marketing and economics as a method of sales promotion especially appropriate and adaptable to the needs of the small businessman. And as a matter of public policy it is also a practice which lends a desirable flexibility to retail pricing.

This background of premium advertising is essential to an understanding of our urgent plea for the defeat or amendment of the pending packaging and labeling bills.

Permit me to discuss briefly the principal provisions of interest in the order of their appearance in the bill.

*Section 4* prescribes regulations for a conspicuous quantity declaration on packaged consumer commodities. The PAAA supported the Model State Weights and Measures Act and Regulations which were carefully developed over the years by the National Conference on Weights and Measures. Hav-

ing done so, we are now confronted, not with a uniform or even a similar federal proposal, but with a broad grant of administrative authority whereby federal agencies are to issue regulation which may supersede and conflict with everything that has already been accomplished.

In the interest of certainty, clarity and uniformity, we ask that Congress itself, on the advice of the House Commerce Committee, prescribe in detail the rules of quantity declaration. We see no reason why these rules should differ from those of the Uniform State Law and Regulations adopted by the National Conference on Weights and Measures. Therefore we urge Congress to follow that model and to preclude the possibility of variation from it.

The absolute prohibition of qualifying words or phrases in *subsection 4 (b)* is non-uniform and surely unnecessary, for it prevents the exercise of a sound discretion to permit the addition of such labeling where it is informative, useful and nondeceptive.

*Subparagraph 5 (c) (3)*, formerly an absolute prohibition, now takes the form of a direction to "regulate" any label offer of a price lower than "the ordinary and customary retail sale price." Considering that issuance of such regulation is triggered, if not compelled, by an official mandate "to facilitate price comparison," the premium industry fears that such action may operate to outlaw many additional premium offers in the nature of coupon promotions, combination sales, or self-liquidators (mail-in offers), and this even where the offer is not fraudulent, deceptive, or misleading. We, therefore, urge Congress to subject this grant of regulatory power to a requirement that the package offer first be shown to be fraudulent, deceptive or misleading before it is restricted.

*Subsection 5 (d)* authorizes the federal agencies to standardize package quantities in order to facilitate price per unit comparison. We oppose this provision in its present form and urge its deletion as a serious threat to the welfare and future of the premium industry. This is, in effect, compulsory standardization, for notwithstanding certain interim procedures under *subparagraphs 5 (e)* and *5 (f)*, it seems clear that a manufacturer is to be compelled against his will to abandon certain weight or quantity categories which, in his considered judgment, represent consumer demand and a profitable market for his product. This being so, we must further test the effect of *subsection 5 (d)* upon traditional freedoms of the premium advertising industry.

We have similar objections to *section 5 (c) (5)*, an additional provision of the bill H.R. 15440, which would also authorize federal agencies to standardize package sizes, shapes and dimensions.

Many forms of premium promotion would be so severely restricted under the compulsory standards of *Section 5* as to present the question whether they can lawfully or practically be introduced in the future at all. For example, a manufacturer decides to adopt as a premium an item which serves both as the container of the original product and as an article for later use by the consumer: e.g., a peanut butter or jelly jar designed to serve as a drinking glass; a container for instant coffee which is designed for later use as a carafe.

We also fear the effect of standardized containers upon the freedom of enclosing premiums in the same container as the advertised article; e.g., offering a free wash cloth or dispenser with a package of soap or detergent.

We understand that product quantity or size standards issued pursuant to *Section 5* of the bill will outlaw all but the standardized packages. To the extent a premium idea necessitates any departure from the standard it appears that official permission must first be obtained in order to use it. The bill apparently contemplates a public procedure, the effect of which will unfortunately be to deny the innovator the rewards of his enterprise and creative discovery. We are all for consumer protection, but we ask Congress to select a more precise form of legislation which achieves that purpose without causing such serious injury to the premium advertising industry—users, suppliers, consultants and related services.

More than most other industries, the premium industry is sensitive to very small variations in cost—cost to the user, and cost to the ultimate consumer. After careful study of the new type of regulation proposed by this bill, we are convinced that it carries a price tag which is prohibitive from the standpoint of

the consumer. Some of the factors we regard as significant in this connection are the following:

The U.S. Department of Commerce has estimated that the proposed standardization of product quantities will entail a cost of about \$20,000 per product standard. We submit that this estimate is in error. It wrongly assumes that these standards will follow the pattern of truly voluntary commercial proposals of the past.

The "voluntary" procedures contemplated in these bills actually involve a highly controversial series of steps in which unwilling manufacturers are to be forced to accept a reduction and a freeze in package sizes which will not only impair their current markets but will discourage research and development for the future. This means multiple and protracted litigation. Its expense is better estimated on the basis of experience under the recent hearings for FDA peanut butter standards. In this view, the added cost per standard will more likely reach hundreds of thousands of dollars for the Government and millions for the industry; and that estimate has yet to be multiplied by the thousands of products subject to quantity standardization. Either by new taxation or by increases in the cost of goods, the consumer will then be confronted with heavy new burdens. Moreover, important consumer agencies such as the Food and Drug Administration and the Federal Trade Commission will be swamped with standardization problems that they will probably have to neglect the much more important public duties for which they were originally established.

In conclusion, we urge this committee to give sympathetic consideration to the function and purpose of premium advertising. This is one form of sales promotion in which the consumer is the direct beneficiary of the major part of the manufacturer's advertising budget.

Careful surveys of consumer attitudes have repeatedly demonstrated the fact that a consumer exercises even greater care in selecting a premium article than she does in making regular purchases. For this reason, success and survival for the premium supplier and user depend upon the extent to which they offer the consumer the premium she wants.

The premium supplier and user are willing to vie with all rivals in the fair competition of a free market. But they cannot cope with the barriers interposed by a system of preclearance controls such as is threatened by the packaging and labeling bills in their present form.

I conclude this statement with an expression of our industry's hope that the Commerce Committee of the House of Representatives will proceed, without haste, to develop a better law which will be of benefit to the consumer, to industry, and to our national economy.

Respectfully yours,

WILLIAM C. BATTLE, *President.*

---

ADVERTISING FEDERATION OF AMERICA,  
WASHINGTON BUREAU,  
*Washington, D.C., July 26, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Advertising Federation of America and the Advertising Association of the West consider this communication to you and your House Committee on Interstate and Foreign Commerce to be one of the most important messages we have directed to the Congress in over a 60-year period.

We appreciate the opportunity you and your committee have given us to present our views regarding certain packaging and labelling control legislation now before you. These bills are presently identified as H.R. 15440 and S. 985.

This letter is written in the same spirit of cooperation with government that has led, over the years, to the establishing of Better Business Bureaus and of the Federal Trade Commission, among other developments. This spirit was reflected anew as recently as July 5 in a message to the membership by Donald A. Macdonald, newly elected chairman of A.F.A. and Director of Advertising, Dow Jones & Co., Inc. He wrote: "Our desire now, as in the past, is to help our government to understand advertising's function. Our federation, with the Advertising Association of the West, conducts the annual Washington Conference to

bring advertising and government closer together and to develop a spirit of mutual respect of the responsibilities of each." Mr. Macdonald also noted anew that: "Most of our fellow advertisers fully respect the Advertising Code of American Business, developed and sponsored by A.F.A., A.A.W. and the Better Business Bureau; yet advertising's role today is misunderstood by many people. We have an important responsibility to correct this situation."

There apparently exists in this proposed packaging and labelling legislation a serious misunderstanding of the intricate process of communicating with consumers. There exists a basic misunderstanding of the significant role of packaging and labelling in that process. And there exists a dangerous misunderstanding of the possible economic effects of this legislation. Because these misunderstandings exist, it is incumbent on us to put before your committee certain facts that we are confident will be found most enlightening and serve a constructive purpose in your deliberations.

As this legislation is purported to serve the interests of the consumer, it may be helpful to review first for you new evidence of the role packaging and labelling play in the place where they and the consumer meet most directly, in that very American institution, the supermarket.

In this kind of market, the consumer is free to choose. No store clerk is at hand to suggest or persuade the consumer to buy this or that, or this brand instead of that brand. Much sales control has passed from store management to the consumer. And few will deny the democracy or the efficiency of these institutions.

It is in this context that the variety of packaging and labelling today have the most direct and salutary effect on the economy, and much of this effect can be summed up in two words: "Impulse buying." If consumers were to stop suddenly their unplanned purchases of products they decide to buy once they are in their supermarkets, the long, much praised and praiseworthy period of economic growth we are experiencing could quickly and dramatically suffer a severe setback.

"Impulse buying" today has become a nearly critical element in the maintenance of a huge product turnover so essential to an expanding economy.

The importance of product turnover was hammered home in 1964 by Daniel L. Goldy, Assistant Secretary of Commerce. He stated in a Chicago address before the Premium Advertising Association of America: "The forward thrust of our economy can be achieved best through a rise in consumption and this must be spurred by sales. Spurring sales is a function of advertising and sales promotion." Mr. Goldy then said, "We look to the creative people in marketing to increase their efforts in advertising, merchandising and selling to trigger a new surge of consumer buying."

There is a very real danger felt by the membership of our organizations that such creative advertising and promotion will be sorely inhibited, to the detriment of our economy and of consumer choice, by the proposed legislation.

We urge this committee to keep in mind they are deliberating about the economic futures of nearly 10,000 packaged grocery store products, drug, cosmetic, personal products and numerous other items that are bought by consumers at a staggering retail value of about \$65-billion a year. This great a portion of our economy would be brought under rigid control by the proposed legislation. This legislation has not received the careful analysis, research, review and debate worthy of its possible damaging impact on the total economy and on the U.S. consumers' freedom to choose.

Just how powerful a selling force packaging and labelling can be has been vividly demonstrated when related to a series of extensive studies conducted by the E. I. DuPont DeNumours & Co. on supermarket buying decisions in the United States.

The 1965 DuPont consumer buying habit study revealed that 68.9% total purchases in supermarkets are store decisions and that only 31.1% of purchases were specifically planned before the consumer entered the store.<sup>1</sup>

<sup>1</sup> The national sample of this study consisted of 7,147 shoppers in 345 representative supermarkets located in 63 countries according to a balanced pattern based on U.S. Government census figures.

Shopping days checked were from Sundays through Saturdays including all shopping hours with 95,262 purchases recorded.

With an average of nearly 7 out of 10 consumer purchases resulting from some decision made *in the store*, it is certainly reasonable to conclude that packaging, labelling and related package promotions play a significant role in motivating this enormous number of consumer decisions termed "impulse purchases." Projecting this, we can estimate \$45-billion worth of consumer decisions to buy are made *in the store*.

No astute marketer today, and none has more than a small share of the \$45-billion at stake in impulse purchase-decisions by consumers, would initiate a major packaging or labelling change without at least:

1. careful analysis of true consumer appreciation of his present packaging;
2. thorough review of proposed new designs;
3. pre-testing new designs among consumers;
4. market testing selected designs in actual situations where consumers could freely register their reaction through their purchasing votes;
5. calculating the total impact on his income as a result of such tests;
6. applying cost vs. results yardsticks before deciding the real economic value of such a move to his national sales picture.

These marketers realize that, when dealing with the buying public, one seemingly minor miscalculation may spell disaster. And so, Mr. Chairman, our membership has great sympathy for the members of your committee who are asked to make a decision affecting the total economy with little or no prior substantiating evidence to guide them. We hope the information we are providing here proves helpful.

If there remains any doubt about the magnitude of these "impulse purchases," let there just occur a 10% drop in the number of products bought today as the result of in-store decisions by consumers and the economy will have been dealt a \$4,500,000,000 blow, with immediate repercussions following like long rows of falling dominoes to cause reduced factory employment, cutbacks in raw material purchases, transportation curtailment, reduction of sales personnel, less service facilities utilized and a drop in tax revenues.

Perhaps this can be even more clearly visualized when we relate the figures on store buying decisions to industries that members of this committee are more familiar with, involving products importantly represented in their own or adjacent states. All committee members and their constituents have a vital stake in the sales promotion value of creative packaging and labeling in motivating consumer purchases.

We urge you not to underestimate the economic force of packaging and labeling when you examine the examples of product store decisions from industries located in your own or nearby states that are more familiar to you. (See Attachments for percent of total store decisions by product categories and representative manufacturers from selected states.)

There is genuine concern and conviction by many people that this legislation will, in fact, be detrimental to the public, and will undermine part of our economic system and the nation's economic health. We hope you and your committee will reach a decision, this bill should be held over for the further study required for legislation which could have such immediate and harmful effects for the nation.

If enacted, it would mark a major setback to our economic system that has so repeatedly proven its efficiency to successfully market a vast volume of goods and services; a system that must continue to expand if our economy is to absorb the ever increasing numbers of men and women who are seeking jobs today and will do so in the years immediately ahead.

There is much more evidence to support our apprehension about the effects of such legislation as you are now studying and will want to study far more deeply than your crowded calendar and the time available will allow. It is legislation which affects all of business, and certainly all of the advertising and marketing community. The broad spectrum of advertising today is exemplified by the fact that the memberships of A.F.A. and A.A.W. include: over 800 companies who advertise and sell nearly every conceivable product; 180 affiliated advertising clubs whose over 35,000 members present a very unique and effective public opinion force at the grass roots level across the country; also a strong membership representation from all areas of media, and finally, 26 affiliated national associations

specializing in various major segments of advertising such as, point-of-purchase display material, direct mail, premium promotion advertising, specialty advertising, television, newspapers, magazines, radio, among other kinds of media and services.

It would still be presumptuous to imply we are speaking for all advertising everywhere. We are, however, in this communication, conveying to you the views of a great many people and firms throughout the United States that we believe typify the advertising community who have expressed such a deep concern about this bill before your committee.

The additional points we now set forth to you represent a composite view of the major factors that have been expressed by our membership. Some naturally feel stronger about certain aspects than others. Some have found additional drawbacks and some have expressed themselves in considerably stronger terms regarding their deep concern and opposition to this bill.

We tried to select that material which we believe is removed from the possibility of intemperate discussion and presented only that which seems to us to go right to the core of what makes this legislation, in the views of so many, objectionable and harmful to advertising.

No one has expressed advertising's function any clearer than President Johnson when he made the following statement to the A.F.A.-A.A.W. Washington Conference on February 5, 1964.

The President said: "I am encouraged by the meeting here in Washington of the Advertising Federation of America and the Advertising Association of the West. Your talks with government officials, which have as their purpose the building of a strong economy through more effective advertising, will, I know, prove fruitful. Advertising in America has made, and will continue to make, beneficial contributions to a healthy and free enterprise economy. Advertising explains and communicates and by so doing builds consumer demand. Demand for goods is the key to an expanding business community. When we create demand we help create jobs. May this meeting be a successful one and may business and government continue to work hand in hand to build a better America."

Without necessarily being in order of importance, here are the salient reasons why industry, in such overwhelming numbers, have expressed their vigorous objections to the language and scope of the proposed packaging and labelling control legislation:

*This proposed legislation provides for the delegation of excessive authority to issue regulations which will unnecessarily and too rigidly control packaging, labelling and promotional offers related to such packaging and labelling. Virtually, it is said, this legislation will put creative packaging and labelling in a straight jacket with no tangible benefits to the consumer.*

Reasonable, basic laws for protecting and controlling packaging and labelling already exist in such federal agencies as F.D.A. and the F.T.C. and, *by their own admission*, these agencies have sufficient authority under existing laws to fully protect the public in this area.

The so-called interim procedure for "voluntary" standards present the problem that industry may be exposed to anti-trust liability for its participation. There is considerable concern that the F.T.C. could, under this legislation standardize a package on just the presumption that consumers might be misled.

There is the further threat to require unspecified additional label information which, if revealed, may unfairly compromise a company's distinct and rightful competitive advantages: e.g., method of processing, origin of ingredients, product formulas, sources of supply, among others.

A careful examination, as we have done, of the statements that were made by certain prominent government department personnel, some economists and some self-styled consumer "protection" groups, clearly brings out the real purpose of their testimony: To advocate legislation that would permit government agencies to reinterpret what is free and fair competition in the United States economy. This, many thoughtful citizens believe, would be a dangerous precedent, if once established, as it would confer excessive power for comprehensive federal control over advertising and many accepted and legitimate business practices.

Former Secretary of Commerce, Luther H. Hodges had this to say about attacks on advertising: "The thoughtless criticism of advertising reflects a profound ignorance of advertising's indispensable role in our economy. Without advertising's ability to stimulate the constantly expanding demand for goods and serv-

ices, our gross national product would not have more than doubled in the past 20 years."

It has been voiced that further inroads into rightful competitive practices are built directly into the legislation now under consideration for controlling packaging and labelling. Companies fear that the bill literally would empower certain regulatory agencies to set regulations that would have the effect of law but would give the advertiser no recourse to the courts to reverse what might be an unjust ruling.

These are very real concerns: This legislation would not only hamper the freedom of certain phases of advertising but also would create the adverse effect on our economy that large numbers of businesses foresee.

This, in itself, is grounds for exhaustively reexamining the merits and demerits of this legislation. It is, for example, the contention of many firms that this bill will add hundreds of millions of dollars a year of additional costs to manufacturers which necessarily must be passed on to the consumer.

The anti-trust implications for business in the standardization measures of the bill warrant a very careful review by the Committee.

There is considerable evidence to point to that this bill, rather than being in the consumers' best interests, would result in higher prices without any more protection than already is provided by existing Federal agencies and the self-regulatory activities of industry itself.

Many members advise us that, in talking with their congressional representatives, they find a vast area of confusion about this legislation. There are decidedly conflicting interpretations on just how far the bill goes, what its effect will be, how stringent are proposed regulations, etc. There appears to be a real need for greater clarification in advance which, of course, is one purpose of your public hearings.

We deeply hope your hearings do develop an accurate assessment of the proposed legislation's true reach and significance. For example, there has been much publicity given to the statements by a handful of consumer-affairs officials regarding a so-called "consumer revolt" about packaging and labeling practices. Yet, recent independent consumer attitude studies reveal that the alleged, widespread dissatisfaction has been greatly exaggerated and that any such "consumer revolt" simply does not exist. Fewer than one in nineteen consumers interviewed are in favor of government agencies determining what changes should be made in packaging practices. Opinion Research Corporation found 91% satisfied with the convenience of packaging, 86% satisfied with the range of package sizes, 80% with the information on packages, and 79% with the product promotions on packages.

There have been recommendations for the elimination in packaging and labeling of "cents-off" offers: An Alfred Politz research study of consumer preferences among retail level promotions showed 80% of women shoppers in favor of such offers. Then, too, a wide variety of special sales promotion offers (premiums, contests, etc.) and other packaging innovations offer interesting opportunities and values to consumers. These would be curtailed, including on-pack and in-pack promotions, highly creative factory-pack special containers (where a product is packed in a reusable container), twin packs, bonus packs (an added sample attached to the package).

We cannot stress too strongly the close correlation that exists today among advertising, packaging and labeling. This is why advertisers are truly concerned about the economic repercussions of such packaging and labeling legislation. Advertising, packaging and labeling are inseparably linked together because they are each needed as essential elements in the total marketing mix. Without advertising's ability to inform and convey a product's attributes to the public, consumers would not be receptive to buying a product when a store decision is made that may have been triggered by an impulse brought about through creative packaging and labeling. These repercussions from packaging legislation are, for all consumers, a \$65 billion question.

We want to work constructively with the Congress in halting the erosion of creative business activities, represented by this legislation before it undermines our economy.

In our judgment, nothing right now could cause a greater breach, throughout the country, between business and government than the unfortunate passage of this Packaging and Labeling Bill.

On behalf of the officers and board of directors of A.F.A. and A.A.W. we wish to thank you and the members of your committee for the careful consideration we are confident will be given to this communication. We hope you will find this information constructive and that it has shed some helpful light on a very important matter.

A.F.A. and A.A.W. have long stood for, upheld and abided by integrity in advertising in conformity with the highest ethical business practices, and you may be assured of our continuing interest in assisting you and your committee.

WILLIAM P. DUNHAM,  
Operations Officer, Member Executive Committee, A.F.A.  
CHARLES W. COLLIER,  
President, A.A.W.

#### ATTACHMENT I

*How food companies rely on in-store and "impulse" decisions by consumers in supermarkets*

Product	Specifically planned purchases	Purchases only generally planned	In-store substitution	Unplanned purchases	Total in-store decisions
Baked foods.....	19.5				80.5
Bread crumbs.....	15.6	23.3	1.1	60.0	84.4
Cake:					
Large.....	16.7	20.4	1.3	61.6	83.3
Small.....	13.1	9.4	2.4	75.1	85.9
Donuts.....	11.7	12.4	2.4	73.5	83.3
Pie:					
Large.....	19.6	13.4	3.6	63.4	80.4
Small.....	16.4	16.4	1.8	65.4	83.6
Rolls:					
Sweet.....	14.0	20.1	1.2	64.7	85.0
Plain.....	20.9	19.5	3.0	56.6	79.1
Hot dog, hamburger.....	19.5	18.1	2.8	59.6	80.5
Candy, crackers, cookies, snacks.....	14.5				85.5
Candy:					
Chocolate.....	11.4	12.8	.6	75.2	83.6
Other.....	8.3	19.9	.8	71.0	91.7
Chewing gum:					
Family pack.....	3.7	5.6	1.9	86.8	93.3
Individual.....	11.4	7.3	.9	80.4	83.6
Cookies and biscuits.....	10.9	21.9	1.3	65.9	89.1
Corn chips.....	20.0	3.3	2.3	74.4	80.0
Crackers:					
Snack.....	24.4	11.3	1.8	62.5	75.6
Staple.....	23.9	19.2	.9	56.0	75.1
Marshmallows.....	14.4	16.3		69.3	85.6
Nuts.....	13.3	17.0	.5	69.2	86.7
Potato chips.....	26.4	13.8	1.9	57.9	73.6
Pretzels.....	10.5	17.8	.7	71.0	89.5
Snacks, other.....	12.9	12.9	1.0	73.2	87.1
Dairy:					
Cheese.....	32.7				67.3
Cheese.....	21.5	19.3	1.9	57.3	73.5
Delicatessen products.....	27.6	9.4	1.0	62.0	72.4
Orange and other juices, fresh.....	23.2	18.4	1.6	56.8	76.8
Refrigerated dough.....	16.5	19.3	1.5	62.7	83.5
Dairy, other.....	25.5	17.5	2.1	54.9	74.5
Frozen foods.....	17.1				82.9
Baked pies.....	16.1	11.4	2.7	69.8	83.9
Baked goods, other.....	12.3	11.2	3.4	73.1	87.7
Dinners.....	11.1	21.7	1.9	65.3	83.9
Fish.....	11.8	28.1	1.7	58.4	83.2
Fruit.....	7.8	26.7	5.5	60.0	92.2
Fruit juices.....	23.2	17.1	4.2	55.5	76.8
Heat and serve.....	13.7	8.3	2.9	75.1	86.3
Ice cream.....	20.4	19.2	1.8	58.6	79.6
Meat.....	16.2	16.2	2.9	64.7	83.8
Pies:					
Meat.....	13.3	16.7	1.7	68.3	86.7
Poultry.....	22.7	11.8	1.8	63.7	77.3
Poultry:					
Parts.....	40.0	20.0		40.0	60.0
Whole.....	37.0	9.3	4.6	49.1	68.0
Soup.....	12.5	9.4	3.1	75.0	87.5
Vegetables.....	15.1	26.4	2.8	55.7	84.9
Groceries.....	23.8				76.2
Baking needs (other than flour).....	25.4	15.6	.9	58.1	74.6
Canned foods.....	17.0	12.2	1.4	69.4	83.0



*How food companies rely on in-store and "impulse" decisions by consumers in supermarkets—Continued*

Product	Specifically planned purchases	Purchases only generally planned	In-store substitution	Unplanned purchases	Total in-store decisions
<b>Cereal:</b>					
Cold.....	26.4	22.9	2.0	48.7	73.6
Hot.....	34.6	17.7	1.2	46.5	66.4
Flavorings.....	18.7	20.5	1.8	59.0	81.3
Diet drinks.....	33.3	26.0		40.7	66.7
<b>Fruit:</b>					
Canned.....	19.0	19.7	1.5	59.8	81.0
Dried.....	11.5	22.9	2.3	63.3	88.5
Fruit juices.....	23.5	17.5	3.1	55.9	76.5
Gelatin desserts.....	32.4	6.7	3.1	57.8	67.6
Gourmet foods.....	13.9	16.7	2.8	66.6	86.1
Heat and serve (nonfrozen).....	20.1	13.9	8.9	62.1	79.9
Jams, jellies.....	21.9	17.8	2.0	58.3	73.1
Lard, shortening.....	40.3	9.7	2.8	47.2	59.7
Macaroni, noodles, spaghetti (canned).....	17.6	8.6	1.4	72.4	82.4
Milk, powdered.....	41.9	12.9	.8	44.4	58.1
<b>Mixes:</b>					
Cake.....	18.5	18.3	1.7	61.5	81.5
Other.....	25.2	10.2	2.5	62.1	74.8
Pet food.....	36.0	16.3	2.2	45.5	64.0
Pickles, olives.....	12.9	18.2	.6	68.3	87.1
<b>Rice:</b>					
Mixed.....	22.9	8.3		66.8	77.1
Plain.....	38.4	16.1	1.0	44.5	61.6
Sauces, dressings.....	29.9	13.7	1.4	55.0	70.1
<b>Soups:</b>					
Canned.....	25.4	20.2	1.7	52.7	74.6
Dried.....	16.7	13.3	2.4	67.6	83.3
Spices (except salt).....	18.0	26.3	1.2	54.5	82.0
Sugar, salt.....	30.5	24.0	2.0	43.5	69.5
Syrups.....	29.4	12.5	.5	57.6	70.6
<b>Vegetables:</b>					
Canned.....	20.4	22.3	1.9	55.4	79.6
Dried.....	11.5	24.1	2.5	61.9	88.5
Vegetable juices.....	24.1	14.6	1.0	60.3	75.9
Vinegar.....	25.5	29.9	1.5	43.1	74.5

## ATTACHMENT II

## SOME COMPANIES WHICH RELY ON IN-STORE AND IMPULSE PURCHASES

Albers Milling Company, Los Angeles, California  
 General Mills, Inc., Minneapolis, Minnesota  
 Kellogg Company, Battle Creek, Michigan  
 Nebraska Consolidated Mills Company, Omaha, Nebraska  
 Pillsbury Company, Minneapolis, Minnesota  
 The Quaker Oats Company, Chicago, Illinois  
 American Chicle Company, Long Island City, New York  
 Blumenthal Bros. Chocolate Company, Philadelphia, Pennsylvania  
 Curtiss Candy Company, Chicago, Illinois  
 Deran Confectionery Company, Inc., Cambridge, Massachusetts  
 Hollywood Brands, Inc., Centralia, Illinois  
 Mars Candies, Chicago, Illinois  
 Ovaltine Food Products Div. of The Wander Company, Villa Park, Illinois  
 Whitman Division Pet Milk Company, Bala Cynwyd, Pennsylvania  
 Wm. Wrigley Jr. Company, Chicago, Illinois  
 Abbotts Dairies, Philadelphia, Pennsylvania  
 Adams Extract Company, Inc., Austin, Texas  
 Louis B. Albert & Son Foods Company, Omaha, Nebraska  
 American Bakeries Company, Chicago, Illinois  
 American Biscuit Company, Tacoma, Washington  
 American Dry Milk Institute, Inc., Chicago, Illinois  
 American Home Foods, New York, New York  
 American Maize-Products Company, New York, New York  
 American Standard Foods Corporation, Boston, Massachusetts  
 Amred Products Company, Omaha, Nebraska

Anderson, Clayton & Company, Dallas, Texas  
Armour and Company, Chicago, Illinois  
Aunt Jane's Foods, Inc., Dearborn, Michigan  
Bachman-Jack's, Reading, Pennsylvania  
Baker Extract Company, Springfield, Massachusetts  
Beatrice Foods Company, Chicago, Illinois  
Beech-Nut Life Savers, Inc., Canajoharie, New York  
Bell Brand Foods, Ltd., Santa Fe Springs, California  
W. L. M. Bensdorp Company, Framingham Center, Massachusetts  
Bercut Richards Packing Company, Sacramento, California  
Berks-Lehigh Fruit Growers, Inc., Fleetwood, Pennsylvania  
Best Kosher Sausage Company, Chicago, Illinois  
Blue Channel Corporation, Port Royal, South Carolina  
Blue Goose, Inc., Fullerton, California  
Blue Water Seafoods, Inc., Cleveland, Ohio  
The Borden Company, New York, New York  
Bravo Macaroni Company, Rochester, New York  
Breakstone Foods, New York, New York  
Breyer Ice Cream Division, National Dairy Products Corp., Philadelphia, Pennsylvania  
Brownie Baking Company, Spokane, Washington  
California Cannery & Growers, San Francisco, California  
California Packing Corp., San Francisco, California  
Carnation Company, Los Angeles, California  
The Cobbs Company, Inc., Little River, Florida  
Coburg Dairy, Inc., Charleston, South Carolina  
Colonial Stores, Inc., Atlanta, Georgia  
Continental Baking Company, Inc., Rye, New York  
Continental Nut Company, Chico, California  
Corn Products Company, New York, New York  
The Creamette Company, Minneapolis, Minnesota  
Crescent Manufacturing Company, Seattle, Washington  
Dailey Pickle Div. The Glidden Company, Saginaw, Michigan  
Dan Dee Pretzel & Potato Chip Company, Cleveland, Ohio  
Delmonico Foods, Inc., Louisville, Kentucky  
Dextra Corporation, Miami, Florida  
Diamond Crystal Salt Company, St. Clair, Michigan  
Dulany Foods, Inc., Fruitland, Maryland  
Durkee Famous Foods Division of The Glidden Company, Cleveland, Ohio  
Durkee-Mower, Inc., Lynn, Massachusetts  
Eckert Packing Company, Defiance, Ohio  
Ewald Bros. Sanitary Dairy, Minneapolis, Minnesota  
Fairmont Foods Company, Omaha, Nebraska  
Farm Stores, Inc., Miami, Florida  
The Figaro Company, Inc., Dallas, Texas  
J. H. Filbert, Inc., Baltimore, Maryland  
Filler Products, Inc., Forest Park, Georgia  
Fischer Packing Company, Louisville, Kentucky  
Fisher Cheese Company, Wapakoneta, Ohio  
Florida Citrus Commission, Lakeland, Florida  
Foremost Dairies, Inc., San Francisco, California  
Foster's of Manchester, Manchester, New Hampshire  
4-Fishermen Sea Foods, Boston, Massachusetts  
The R. T. French Company, Rochester, New York  
Frito-Lay Inc., Dallas, Texas  
Frozen-Rite Products, Dallas, Texas  
General Baking Company, New York, New York  
General Foods Corporation, North White Plains, New York  
Gerber Products Company, Fremont, Michigan  
Green Giant Company, Le Sueur, Minnesota  
Ben Hill Griffin, Inc., Frostproof, Florida  
Grocery Store Products Company, West Chester, Pennsylvania  
HCA Food Corporation, Baltimore, Maryland  
Habitant Soup Company, Manchester, New Hampshire  
Hale Halsell Company, Tulsa, Oklahoma

Hawthorn Melody, Inc., Chicago, Illinois  
H. J. Heinz Company, Pittsburgh, Pennsylvania  
Geo. A. Hormel & Company, Austin, Minnesota  
Hunt Foods and Industries, Inc., Fullerton, California  
Hygrade Food Products Corp., Detroit, Michigan  
International Meat Processors, Inc., Atlanta, Georgia  
International Salt Company, Clark Summit, Pennsylvania  
The E. Kahn's Sons Company, Cincinnati, Ohio  
Klarer of Kentucky, Inc., Louisville, Kentucky  
Kraft Foods, Chicago, Illinois  
V. La Rosa & Sons, Inc., Westbury, Long Island, N.Y.  
Lawry's Foods, Inc., Los Angeles, California  
Leslie Salt Company, San Francisco, California  
Libby, McNeill & Libby, Chicago, Illinois  
Oscar Mayer & Company, Chicago, Illinois  
McCormick & Company, Inc., Baltimore, Maryland  
Mickelberry's Food Products, Inc., Chicago, Illinois  
Minute Maid Company, Orlando, Florida  
John Morrell & Company, Chicago, Illinois  
Morton Foods, Dallas, Texas  
Morton House Kitchens, Nebraska City, Nebraska  
Mothers Cookie Company, Louisville, Kentucky  
Mrs. Baird's Bakeries, Inc., Dallas, Texas  
National Biscuit Company, New York, New York  
National Dairy Products Corp., New York, New York  
National Tea Company, Chicago, Illinois  
The Nestle Company, Inc., White Plains, New York  
Ocoma Foods Company, Omaha, Nebraska  
Ocean Spray Cranberries, Inc., Hanson, Massachusetts  
Parks Sausage Company, Baltimore, Maryland  
Pasco Packing Company, Dade City, Florida  
S. S. Pierce Company, Boston, Massachusetts  
Pioneer Ice Cream Division of the Borden Company, Brooklyn, New York  
The Rath Packing Company, Waterloo, Iowa  
Refined Syrups & Sugars, Inc., Yonkers, New York  
P. J. Ritter Company, Bridgeton, New Jersey  
Safeway Stores, Inc., Oakland, California  
Savannah Sugar Refining Corp., Savannah, Georgia  
Sealtest Foods Ice Cream Division, Long Island City, New York  
Seymour Foods Company, Topeka, Kansas  
Springfield Sugar & Products, Windsor Locks, Connecticut  
Sunkist Growers, Inc., Los Angeles, California  
Tastee Company, Newark, New Jersey  
Thristimart, Inc., Los Angeles, California  
Venice Maid Company, Inc., Vineland, New Jersey  
Watkins Products, Inc., Winona, Minnesota  
Worthington Foods, Inc., Worthington, Ohio  
Zinsmaster Baking Company, Minneapolis, Minnesota  
Fisher Flouring Mills Company, Seattle, Washington  
Golden Mix, Inc., Warsaw, Indiana  
Kansas Wheat Commission, Hutchinson, Kansas  
Martha White Mills, Inc., Nashville, Tennessee  
North Dakota Mill & Elevator, Grand Forks, North Dakota  
Prepared Products Company, Inc., Pasadena, California  
Roman Meal Company, Tacoma, Washington  
Blevins Popcorn Company, Nashville, Tennessee  
Chiclecraft, Inc., Knoxville, Tennessee  
Gum Products, Inc., East Boston, Massachusetts  
Liberty Orchards Company, Inc., Cashmere, Washington  
New England Confectionery Company, Cambridge, Massachusetts  
H. B. Reese Candy Company, Inc., Hershey, Pennsylvania  
Stuckey's, Inc., Eastman, Georgia  
George Ziegler Company, Milwaukee, Wisconsin  
Acme Markets, Inc., Philadelphia, Pennsylvania  
The Amalgamated Sugar Company, Ogden, Utah

American Beauty Macaroni Company of Minn., St. Paul, Minnesota  
 American Sugar Company, New York, New York  
 Arnold Bakers, Inc., Greenwich, Connecticut  
 Baker Brand Fillings, Pittsburgh, Pennsylvania  
 Beaver Home Products Company, Pennasauken, New Jersey  
 Booth Fisheries, Chicago, Illinois  
 Bridgford Foods Corporation, Secaucus, New Jersey  
 Carl Buddig & Co., Chicago, Illinois  
 Campbell Soup Company, Camden, New Jersey  
 Case-Swayne Company, Inc., Montebello, California  
 Chip Steak Company, Oakland, California  
 The Chun King Corporation, Duluth, Minnesota  
 Comet Rice Mills, Inc., Dallas, Texas  
 Commodore Foods, Inc., Westford, Massachusetts  
 Cremoland Butter Company, Inc., New York, New York  
 Cross Baking Company, Inc., Montpelier, Vermont  
 Dairy Queen National Development Company, St. Louis, Missouri  
 Dannon Milk Products, Inc., Long Island City, New York  
 Dutch Maid Food Products, Inc., Salem, Oregon  
 Ever Sweet Foods, Inc., Lyons, Illinois  
 Fischer Baking Company, Newark, New Jersey  
 Fremont Kraut Company, Fremont, Ohio  
 L. A. Frey & Sons, Inc., New Orleans, Louisiana  
 T. W. Garner Food Company, Winston-Salem, North Carolina  
 Godfrey Company, Waukesha, Wisconsin  
 The Great China Food Products Company, Chicago, Illinois  
 Haley's Foods, Inc., Hillsboro, Oregon  
 Hilton Seafoods Company, Inc., Seattle, Washington  
 H. P. Hood & Sons, Inc., Boston, Massachusetts  
 Jays Foods, Inc., Chicago, Illinois  
 Kikkoman International, Inc., San Francisco, California  
 A. C. Kissling Company, Philadelphia, Pennsylvania  
 John Kraft Sesame Corp., Paris, Texas  
 Knickerbocker Mills Company, Totowa, New Jersey  
 John Lecroy & Sons, Inc., Camden, New Jersey  
 The Kroger Company, Cincinnati, Ohio  
 Kunzler & Company, Inc., Lancaster, Pennsylvania  
 Mangels, Herold Company, Inc., Baltimore, Maryland  
 Miami Maid Bakery Company, Inc., Dayton, Ohio  
 Mission Pak Company, Los Angeles, California  
 Nalley's, Inc., Tacoma, Washington  
 Old Virginia Packing Company, Front Royal, Virginia  
 Pen-Jel Corp., Kansas City, Mo.  
 Pfeiffers Foods, Inc., Buffalo, N. Y.  
 Pomona Products Company, Griffin, Georgia  
 Revere Sugar Refinery, Boston, Massachusetts  
 Saltwater Farm, Inc., Damariscotta, Maine  
 Shoreline Seafoods, Ltd., Tampa, Florida  
 Southland Canning & Packing Company, Inc., New Orleans, Louisiana  
 Stella-D'Oro Biscuit Company, Inc., New York, New York  
 Super Valu Stores, Inc., Hopkins, Minnesota  
 Tastee Company, Newark, New Jersey  
 Tropicana Products, Inc., Bradenton, Florida  
 Virginia State Apple Commission, Staunton, Virginia  
 Wilbur-Ellis Company, San Francisco, California  
 Mavar Shrimp & Oyster Company, Biloxi, Mississippi

NOTE.—The companies listed above are only meant to represent types of companies to whom impulse and other in-store purchase decisions by consumers are vitally important. It is not a full list. And insofar as possible, it has been restricted to selected companies within states represented by members of the House Committee. Not all states are listed. And only food companies are listed. The listing could be extended to include beverage and non-food companies to whom package and labelling are important aids in in-store and impulse buying decisions.

SOUTHWEST (10TH) DISTRICT ADVERTISING FEDERATION OF AMERICA,  
*Dallas, Tex., July 18, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, House Office  
 Building, Washington, D.C.*

DEAR CONGRESSMAN: We are attaching a Resolution on the Packaging and Labeling Bill now being considered by your committee.

This resolution was unanimously adopted at the mid-summer Directors Meeting of the Southwest (10th) District of the Advertising Federation of America meeting in Fort Worth, Texas last Saturday, July 16th.

Over sixty officers and directors of the sixteen advertising clubs in Texas, Oklahoma, Arkansas and Louisiana, representing about two thousand members, were in attendance and joined in supporting the Resolution.

We sincerely hope you and members of your committee will consider the contents of this Resolution before voting on the bill.

Sincerely yours,

JACK TIMMONS, *Governor.*

#### RESOLUTION ON PACKAGING AND LABELING BILL

ADOPTED—SATURDAY, JULY 16, 1966

Whereas Senate Bill 985, The Hart Bill, passed by the Senate June 9 is now under consideration of the House Interstate and Foreign Commerce Committee, where hearings will soon be held on it and on H.R. 15440, The Staggers Bill, a similar proposition . . .

And, whereas these bills are totally objectionable because existing Federal laws already empower the Department of Agriculture, the Food and Drug Administration of Health, Education and Welfare, and the Federal Trade Commission to take effective action against false and deceptive packaging and labeling . . .

And, whereas these bills are further objectionable because they delegate broad rule and regulatory authority to administrative agencies . . . power allowing them to issue edicts and rules with the effect of statutory law, diluting and usurping authority which rightfully should remain in the hands of the Congress itself . . . such as the portion of these bills which allows the Federal Drug Administration and the Federal Trade Commission to decide when there are too many sizes of a product—a most objectionable provision in that it allows a government agency to deprive the consumer of the right of choice in the market place . . .

And, whereas these bills are often vague and general in their provisions in ways that will cause untold legal problems in interpretation and be practically impossible to enforce uniformly . . .

And, whereas these bills would invalidate state requirements on packaging and thus cause the necessity of revision of nearly all labels now in use—a cost that would have to be absorbed by business first, and passed on to the consumer in increased cost of goods purchased . . . : Be it therefore

*Resolved by the Board of Directors of the Southwest (10th) District of the Advertising Federation of America, assembled in Fort Worth, Texas on the 16th Day of July, 1966, That the Federal Government, instead of promoting these bills which would add to the cost of goods to the consumer, be urged to promote consumer welfare by more diligently and rigorously enforcing existing legislation already enacted for the protection of the consumer and by cooperating with the states in the enforcement of their laws to this effect . . . ; and, be it further*

*Resolved, That the members of the House Interstate and Foreign Commerce Committee be informed that this organization categorically opposes the adoption of either of these bills as unnecessary, detrimental to the economic life of our country, and an unwarranted attack on the integrity of business which has developed for this country the highest standard of living in the world.*

AMERICAN ASSOCIATION OF ADVERTISING AGENCIES, INC.,  
New York, N.Y., July 22, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: The American Association of Advertising Agencies, whose 354 member advertising agencies place nearly three-fourths of all national advertising in the United States, wishes to go on record with the House Committee on Interstate and Foreign Commerce in opposition to some of the provisions in H.R. 15440 and S. 985—the “fair packaging and labeling” legislation.

We have no quarrel with the legislation's stated intent, but we are opposed to those sections of the bill which would curtail or prohibit legitimate merchandising practices by all manufacturers to halt the abuses by a few.

We are opposed to the “discretionary” sections of the bill, which would, in effect, give the Food and Drug Administration and the Federal Trade Commission nearly unlimited license to regulate product labeling and packaging. Law making is the responsibility of the Legislative Branch of government, not the Executive Branch, and we are of the opinion that passage of this legislation in its present form would be an abdication by Congress of its authority and responsibility.

We are opposed to those sections of the bill which would increase product costs to consumers by prohibiting legitimate sales and promotion practices and those which would tend to inhibit the development of new products and innovations of existing ones. This is “protection” the consumer neither wants nor needs. It would add to the consumers' costs and would ultimately lead to a slow-down in development of product improvements and conveniences which consumers *do* want and need.

Finally, we oppose those provisions which would needlessly duplicate or supercede existing state and Federal laws and regulations. More effective administration of present law is, in our view, of greater potential value to the consumer and of considerably less cost to government, the manufacturer, and the public.

Specifically, we urge you and your Committee to eliminate or drastically alter present provisions which would:

- permit standardization of package weights and quantities (Sec. 5(c));
- permit standardization of package sizes, shapes and dimensions (Sec. 5(c) (5) of H.R. 15440);
- authorize regulation of “cents-off” and similar conventional merchandising practices (Sec. 5(c) (3));
- prohibit addition of words qualifying quantity declarations even when those words do not in any way deceive or exaggerate the quantity (Sec. 4(b)); and
- require a separate label statement of content quantity in terms of ounces, instead of in terms of the largest whole unit, as now required by Federal and state law (Sec. 4(a) (3) (A)).

The aim of both bills—yours and Senator Hart's—has been stated as being to prohibit *unfair and deceptive* packaging and labeling. The above cited provisions mean when you say “consumer protection.”

Valuable and legitimate merchandising practices which effect savings for the consumers and do not deceive or mislead her should not be banned. Several of the provisions, however, make no distinction between misleading promotions and packaging practices and those which are not misleading in any respect. We believe that it is the duty of the Congress to distinguish between legitimate and illegitimate practices. If this line is not drawn, the honest manufacturer will suffer for the dishonest; the small manufacturer with a good new product will find new barriers to market entry; and consumer savings on sales and special offers will be erased. We do not believe that this is what you and your colleagues mean when you say “consumer protection.”

We *do* believe that you and your Committee should alter the proposed legislation to define precisely what you want FTC and FDA to do. The present bill is something of a “blank check” made out to these two agencies.

A provision-by-provision analysis of H.R. 15440 and S. 985 shows that, with the exception of the costly weights and quantity standardization provision and the section of your bill which would allow regulation of package sizes, shapes and dimensions, all their major proposals duplicate or injuriously conflict with existing state and Federal law. This raises serious doubts, in our opinion, that there

is a demonstrable need for the enactment of the bills you and your Committee now have under consideration.

Sincerely,

JOHN CRICHTON, *President.*

TAFT BROADCASTING CO.,  
Cincinnati, Ohio, August 12, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: We recently had occasion to broadcast an editorial concerning the so-called "Truth in Packaging Bill", H.R. 15440, being considered by your Committee. Because of the large reaction to the editorial I thought it well to call it to your attention. (See attachment A.)

Certainly Taft Broadcasting Company is four-square behind protection of the consumer. It is our opinion we already have adequate protection under the law through the machinery of the Federal Trade Commission and the Food and Drug Administration. One of the larger implications of "Truth in Packaging" goes far beyond any concept of consumer protection. Indeed, it reaches the heavy hand of government control into one of the primary sources of innovation and profit in consumer goods manufacturing. . . . and from there into the very lifeblood of the communications machinery that makes possible mass consumer goods sales.

The revolution in consumer goods packaging over the past decade is self-evident: from the flip-top box to the frozen TV dinner to the clever toy plastic containers for children's cosmetics. Creative packaging has in itself created a boom in product sales and in manufacturing, distribution, merchandising, and sales employment. I think it not an exaggeration to attribute to the packaging revolution a significant share in our current prosperity.

Part of this revolution has been the phenomenon of television advertising in pre-selling consumer goods, much of it involving brand competition within the same product lines and sometimes even the same company. The advertising revenue generated by this sort of competition is the *only* source of support of the nation's entire mass communications radio and television industry. To impose standardization of packaging under the guise of consumer protection upon the nation's consumer goods manufacturers would be a far-reaching step in the history of unnecessary government interference with free enterprise. It is this aspect of the bill that gives us greatest concern. Among other things, it could be utterly ruinous to television and extremely damaging to all other media of communication and advertising. Its immediate impact would be upon the employment potential of many of the nation's leading providers of paychecks.

I urge you to give this matter your most serious consideration before enacting this dangerous legislation.

Sincerely,

L. H. ROGERS, *President.*

[Attachment A]

#### A WKRC EDITORIAL

#### ARE WE ALL STUPID

We find it highly insulting to discover that many Congressmen think we're stupid. This is what the "Truth in Packaging" bill tells us. It says that those who want the bill passed think the American consumer—you and I—can't read, see, or make quality judgments. It presumes that we can't tell a product's size because of terms such as 'giant', 'family', and 'economy size'. It also assumes that, in our stupidity, we don't know that a half-quart doesn't become larger when called a 'giant half-quart'.

These advertising attention-getters may be silly and over-done. But we're not so ignorant that we can't see that a quart is a quart, no matter what you call it.

Apart from insulting us, many other aspects of the "Truth In Packaging" bill are disturbing. We don't need even more government regulations on the size, shape and wording of food and cleaning product packages. In fact, all aspects of this bill are fully covered now under existing laws.

In addition, this bill would undoubtedly increase your marketing costs. Every manufacturer would probably be forced to change-over his production and packaging methods. The enormous costs would be passed along to us consumers.

If you feel as we do, let your congressman know. Tell him you don't need the additional big brother approach of the "Truth In Packaging" bill.

CORO, INC.,  
New York, N.Y., August 16, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, House Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: My name is Edwin J. Oppenheimer and I am Manager of Premium Sales Division of Coro, Inc., 47 West 34 Street, New York, New York. I offer this letter as testimony for the Hearing Record of the Packaging and Labeling Bills, H.R. 15440 and S. 985.

Coro, Inc., has been engaged in manufacturing and marketing of fashion jewelry and some allied products for a period of over 50-years and we are a publicly owned corporation listed on the American Stock Exchange. An important portion of our business results from the sale of our jewelry products to manufacturers of food and soap products and similar packaged merchandise for use as premiums, where such jewelry is offered to consumers at specially reduced prices in conjunction with their purchase of such food and soap products or given gratis to the consumer for proof of such purchase.

A number of the employees of our company engaged in production, design and administrative activities are directly employed in the manufacture of such premium jewelry. Substantial amounts of raw material and semi-fabricated parts are also used in the manufacture of this premium jewelry, which in turn provides employment for our supplying companies.

Because subparagraphs 5(c)(3) and subsection 5(d) seriously threaten and could prevent the manufacturing and marketing activities of our company, as described above, we hereby protest against these sections of such pending legislation and ask that these be eliminated from the text of this Bill.

Premium merchandising in this fashion has shown itself to be a strongly non-inflationary method of competition providing greater material advantages to the housewife for her food dollar. The restriction of such forms of marketing activity would have an inflationary effect and would contribute greatly to unemployment because of inability to participate in this field of commerce.

I should like also to comment on those sections of the pending legislation which would seek to standardize packaging of food products. Such a step would be highly inflationary because of the tremendous expense that would be involved in the control of each package; it would greatly restrict competitive enterprise as the introduction of special values in the food field would be made impossible. I would like to add here that I believe the Department of Commerce's estimate of \$20,000 per product standard is erroneously low and that, as a result, unnecessary packaging expense could not help but add to the cost of the food products. In this connection I would like to refer specifically to the testimony submitted on July 20, 1966 by William C. Battle, President of Premium Advertising Association of America, Inc.

We ask that you give careful consideration to the damage that such legislation could do to our industry and the ensuing unemployment that could be created before reporting on H.R. 15440 and S. 985.

Respectfully yours,

EDWIN J. OPPENHEIMER,  
Manager, Premium Sales Division.

OWENS-ILLINOIS,  
Fairmont, W. Va., June 30, 1966.

HON. HARLEY O. STAGGERS,  
House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I am very much concerned about the subject bill and its effect on the growth and development of the Glass Industry in West Virginia. While the intent of the bill is to protect the consumers, I believe it



would be detrimental to the Glass Industry, which is a substantial employer in our State. My opposition to the bill results from the following factors:

1. Such legislation would increase costs of package manufacturers, packers, and bottlers, and thereby *increase* costs to consumers.

2. It would deprive consumers of the right to purchase packaged products in such quantities and such sizes and shapes as they desire;

3. Both Acts (S. 985 and H.R. 15440) would prohibit packaging innovation;

4. Both Acts (S. 985 and H.R. 15440) would place glass container manufacturers at a severe disadvantage in their competition with manufacturers of other forms of packages and packaging materials;

5. Both Acts would have substantial adverse effects upon employment in the glass container industry;

6. Such legislation would *not* materially aid consumers in making price-per-ounce comparisons so long as retailers remain free to price their products as they choose;

7. Deceptive packaging is illegal under existing laws, which if vigorously enforced will afford consumers every bit as much protection against deception as would enactment of this new legislation, and without above disadvantages;

8. The remedy is vigorous enforcement of existing laws and *not* enactment of new laws.

I trust you, as Chairman of the Interstate and Foreign Commerce Committee, will give consideration to my opposition to this bill in your forthcoming hearings.

Yours very truly,

C. J. SNYDER,  
*Plant Manager.*

KERR GLASS MANUFACTURING CORP.,  
*Los Angeles, June 30, 1966.*

Re H.R. 15440.

HON. HARLEY O. STAGGERS,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. STAGGERS: We are one of many industries who support the economy of your state. We, like yourself, are vitally concerned regarding the welfare of our country, the individual states, the individuals in all states along with the industries, etc., who make our nation great.

We are opposed to this Packaging Bill and are vitally concerned as a small family corporation, as well as concerned for the entire glass container industry. What is proposed is additional and unneeded legislation, and we beg your indulgence to read on. With your proven sense of fairness, concern for the welfare of your country and state and the individuals who make up our great nation, we ask that you respectfully weigh and consider the following opinion:

A. The remedy is not enactment of new laws but strong pursuit and enforcement of existing laws and statutes. We do not see any failure in the existing laws but only a lack of enforcement. We think you will agree with this statement, after you fully study once more the existing laws.

B. Employment in the glass container industry would be adversely effected. The Hart Bill S. 985 and H.R. 15440 would do the following to our industry:

1. Place us, the glass container industry, at a disadvantage in competing with other forms of packaging materials.

2. Restrict and/or prohibit packaging innovations. The glass industry exists on its creativeness and initiative.

Resultantly, employment would be reduced as we would have no alternative. We do not feel this is the intent of the proposed legislation but it would be the cause and the effect.

C. Holding costs and prices down. How can this be done when this proposed legislation would do the following:

1. Increase costs of the package manufacturers.

2. Increase costs to the packers.

3. Increase costs to the bottlers.

4. Results of 1, 2 and 3 would definitely increase costs to the consumer—we know this is not the intent of this legislation.

D. Is the consumer being considered if:

1. The legislation deprives the end user the right to purchase packaged products in the shape, size, and quantity they desire.

2. They (the consumer) are not materially aided in making price-per-ounce comparison when retailers are free to price the merchandise they handle and sell to the consumer.

3. They (the consumer) have to absorb the increase costs of package manufacturers, packers, and bottlers.

E. The consumer is not being considered or protected when there has been failure to enforce *existing* laws making deceptive packaging illegal. Present legislation, not this newly proposed legislation, affords the consumer every bit of protection against deception as would the enactment of this proposed legislation, and without the above cited disadvantages to consumer and industry.

We are sure it is not the intent of Congress, or any Congressman, to create new legislation because the proper agencies failed to enforce existing laws, yet in our opinion this is what is being done.

As a consumer, as a member of industry who will be vitally effected we respectfully ask that you weigh, consider, and evaluate this proposed bit of legislation with one thought in mind—"Is this added legislation necessary; is it beneficial or harmful; and do we have current laws that can produce sound protection to the consumer and to industry, providing present legislation were vigorously enforced?"

Cordially yours,

M. R. KEER, *Vice President.*

LIBBY, McNEILL & LIBBY,  
Chicago, Ill., June 22, 1966.

Congressman HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: I am writing to you in regard to HR 15440, on packaging.

We in the food industry are vitally interested in offering the consuming public only foods that are honestly represented. I am particularly acquainted with the canned and frozen food segments of the food industry, and I believe they have done an outstanding job in promoting honesty and fair dealing. I therefore can see no reason for the proposed legislation.

Mr. Milan Smith of the National Canners Association has testified a number of times regarding the labeling provisions of the proposed legislation, and we believe that the various points he has cited substantiate our opinions that the suggested legislation is unnecessary.

The Food and Drug Administration and the Federal Trade Commission already have, and are exercising, the power to prevent unscrupulous or misleading advertising or labeling. Any new legislation of the type that is proposed will essentially "freeze" the science and technology of most foods at the level of the containers and sizes presently being offered. This will not be in the best interests of the consumer, who will thus not benefit from the new product and package technology that is constantly being developed in the food research laboratories of the country.

The food standards of identity legislation that was passed twenty-odd years ago has been administered in such a way that there is little incentive for a food manufacturer to improve his products. The technology was originally "frozen" to the developments at the time of the promulgation of the particular standard, and the consumer has suffered. I am afraid that the results would be similar if HR 15440 was passed.

I trust that your Committee, after its hearings, will decide not to recommend this legislation to the House.

Sincerely yours,

ROBERT M. SCHAFFNER,  
*Vice President, Research and Quality Standards.*

LIBBY, McNEILL & LIBBY,  
Chicago, Ill., June 20, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman of the House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

MY DEAR MR. STAGGERS: I am writing to voice objection to what has been termed the "Fair Packaging and Labeling Act, H.R. 15440." In my opinion excellent testimony has been presented not once but many times to point out that this is a

most unnecessary type of regulation considering that there are presently adequate regulations to protect the customer. This bill goes into a realm of deliberately interfering with commerce. It would seriously curtail the manufacturers' flexibility in developing new packaging. Our pride in the continuous development in new and modern packaging would be thwarted. The bill marks the marvelous advances and interesting innovations in packaging as being conceived for deliberate deception. What we come to is regimentation. It certainly will accomplish the restriction of the hiring of workers in both the development and manufacture of packages and in development and manufacture of new products, if that is what is desired, and I am sure it is not.

Parents Magazine of July 1966 explained many things about packaging to its readers—the reasons for certain size packages, the reasons for different weights of product per package, etc., pointing out how any housewife can be well informed and how the manufacturer tries to give her his product in the most practical and pleasing manner. It should be obvious that this is of the utmost importance to manufacturers who do not live by one sale but by repeat sales.

I urge your extremely careful consideration of this legislation which in my opinion is entirely unnecessary.

Sincerely,

K. C. HARDWICKE,  
Vice President.

---

REED & PRINCE MANUFACTURING CO.,  
Worcester, Mass., August 18, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman of the Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D.C.*

DEAR SIR: On behalf of the management and employees of Reed & Prince Manufacturing Company, we respectfully urge that you encourage and support an amendment to the Truth in Packaging Bill—H.R. 15440 which would require that all packages of imported items, such as hand tools, screws, nuts, tubular, split and solid rivets, be clearly and conspicuously marked in English with the name of the country of origin of the contents.

The above suggested amendment is germane and completely in accord with the spirit and objective of H.R. 15440, which is designed to protect the public against misrepresentation through packaging of the thousands of products offered for sale in the United States. This amendment requiring marking of country of origin is badly needed because of the growing and misleading practice of unethical concerns of repackaging many imported products and passing them off on the public as "Made in U.S.A." products with no marking to indicate country of origin.

The above suggested amendment would also strengthen and make positive the marking regulations of the Federal Trade Commission and enable the Commission to effectively combat the misrepresentation of packaged imports as "Made in U.S.A." products.

Your support of the above amendment to H.R. 15440 will be greatly appreciated by all of our employees and stockholders.

This letter is respectfully submitted in behalf of the management and employees of Reed & Prince Manufacturing Company.

Respectfully yours,

DANIEL B. RICHARDSON,  
Executive Vice President.

---

GROUP HEALTH ASSOCIATION OF AMERICA, INC.,  
Washington, D.C., August 17, 1966.

HON. HARLEY STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: I am writing to inform you of my strong support for the Packaging and Labeling Bill—H.R. 15440, popularly known as the "Truth in Packaging" Bill, which is now before your Committee.

As a citizen, I have been dismayed and indeed appalled at the campaign of misinformation and misrepresentation that has been unleashed in opposition to

this worthy and much needed legislation, since S. 965 was enacted by the Senate. The wild claims about the increased cost of consumer products which allegedly would result from enactment of this Bill are pure fantasy. The Bill would indeed curb the imagination of the advertising industry, which does raise the price to the consumer by the cost of fancy labeling and other devices to distract him from consideration of the quality and quantity of merchandise he is buying. Regulating this activity will in the long run reduce rather than increase the cost of commodities.

During my years with the U.S. Government, including nine years from 1948 to 1957 as Deputy Surgeon General of the Public Health Service, I acquired a deep feeling of the need for public regulation of certain elements of our competitive economy which abuse the ethics of our free enterprise system to further their own special interest at the expense of the consumer. I have been familiar with this phenomenon in the health field with respect to drugs, sickness insurance, and quack remedies sold directly to consumers. My year's service on President Johnson's Consumer Advisory Council has broadened my knowledge and conviction of the need for this kind of regulation.

I strongly urge your support and early action to report and secure enactment of H.R. 15440, which will benefit all the people.

Sincerely,

W. P. DEARING, M.D.,  
*Executive Director.*

CONSUMERS' COOPERATIVE SOCIETY,  
*Palo Alto, Calif., July 25, 1966.*

HON. HARLEY STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

DEAR CHAIRMAN STAGGERS: We are one of many member-owned consumer cooperative retail supermarkets. Our Society now enjoys 7853 members and has been interested in helping the consumer to buy more wisely since 1935.

We were pleased to learn that the Senate recently passed its "Truth-in-Packaging" bill S. 985.

Further, we were pleased to learn of your "Fair Packaging and Labeling Act" bill H.R. 15440. We wholeheartedly agree that "Informed consumers are essential to the fair and efficient functioning of a free market economy."

On July 21, 1966 my Board of Directors passed a resolution expressing its interest in your Bill H.R. 15440 clearing your Committee at the earliest possible time so that it may come up for vote before the House of Representatives adjourns and my Board asked me to advise you of its feelings.

While you and your committee will be concerned with technical language, I can only pass on to you our concern that you get as strong a Bill as possible which will provide for:

- (1) Standards for packaging which the consumer-buyer can understand and trust;
- (2) Standards for labeling which clearly represents the contents both in word and in picture—where pictures are used;
- (3) Standards for labeling which clearly indicates in easily read print the unit weight, count etc. of the contents to "... facilitate price comparisons."
- (4) Standards of contents which can be expressed in even or half units, i.e. pounds, half-pounds; quarts, pints; full ounces, etc. "... to facilitate price comparisons."

Respectfully and cooperatively requested,

VAL LITTON,  
*General Manager.*

HYDE PARK COOPERATIVE SOCIETY, INC.,  
*Chicago, Ill., July 26, 1966.*

HON. HARLEY STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Board of Directors of the Hyde Park Cooperative Society, Inc., of Chicago, Illinois wishes to speak in support of the truth-in-packaging bill (H.R. 15440). Through the operation of our supermarket

which stocks over 10,000 items, we are well aware of the confusion facing shoppers.

We firmly believe consumers have the right to meaningful information on labels and to intelligible packaging of products in units of weights or measures that will allow price per unit comparisons to be made easily among competing brands as well as among different sizes of the same brand.

Because of this, a number of ways have been developed by our Co-op to provide information to our members and customers. These include cost per ounce shelf signs posted for some 2,000 products, articles published in weekly and monthly publications and informative exhibits set up in the store where leaflets are distributed. These practices are not disruptive to the flow of merchandise through our store since we do \$6,000,000 worth of business per year.

In conclusion, we strongly urge passage of this bill.

Sincerely yours,

GILBERT L. SPENCER, *General Manager.*

---

NATIONAL COUNCIL OF FARMER COOPERATIVES,  
Washington, D.C., September 2, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: On behalf of the National Council of Farmer Cooperatives, a nationwide federation of farmer business associations for marketing of agricultural commodities or purchasing of farm supplies, I am presenting our views on H.R. 15440 and S. 985, the "Fair Packaging" bills now being considered by your Committee. Many of our member organizations have a direct and vital interest in provisions of these bills which would affect their processing operations and thereby the welfare of their farmer patrons. We are of the opinion that our views in this matter are also consistent with the best long-range interests of the consuming public.

The Council is opposed to this proposed legislation as a potentially serious obstacle to the business community's need to improve efficiency and service to consumers through innovation and through vigorous competition in merchandising programs based on new product and packaging development.

The current policy of the National Council in this matter is stated in the following resolution:

MODERN MERCHANDISING METHODS

"Changing social customs, rising real incomes and new eating and living habits create a need and desire for new consumer products and services. The maintenance of a dynamic economy requires maximum freedom of opportunity for business firms to create, introduce and merchandise these products and services, including appropriate research, testing, packaging, advertising, and pricing. Such modern merchandising should seek to inform as well as to persuade consumers and should be consistent with existing laws requiring safety and accurate labeling as to contents of packages and use by consumers.

"The existence of numerous closely related products for sale at retail requires more care and intelligence by consumers than was necessary earlier. We strongly support industry testing and reporting on new products and dissemination of information which will help consumers be more skillful buyers. Legislation will not protect buyers from gullibility or carelessness. Intelligent buyers and consumers of food products are adequately protected by frequency of shopping, by easy availability of dozens or even hundreds of closely competing products, by the abundant production of farm products, by availability and use of federal or state grades, and by intensive competition among retailers and among manufacturers for sales and profits."

We endorse the principle of adequate, honest information for consumers, but we do not believe the long-range benefits to consumers through progressive, innovative packaging developments should be risked because of the limited amount of abuses which truly mislead consumers. The extent of these abuses has frequently been exaggerated; it is difficult to place credibility, for example, in arguments that such practices as the "giant half-pint" approach to labeling, "camouflaged" bottle bottoms, or even "slack-filled" packages would cause seri-

ous problems in comparison shopping for discriminating consumers. No amount of government regulation, of course, can prevent confusion on the part of that minority of consumers who have careless buying habits.

It is our belief also that abuses in this field are to a great extent corrected by consumer pressures. A seriously malfunctioning or misleading package usually leads to reduced sales of a product. When this fails, legal recourse is already available when it can be shown that a clearly deceptive abuse exists.

The risk of long-range disadvantage to consumers is serious under proposals of these bills which would greatly restrict processors' incentives and opportunities to invest in well-tested package improvements or to enhance values of a quality brand product through individualized, imaginative packaging and labeling which assists shoppers in quickly locating a favored brand. Critical barriers to innovation would also be raised by advance clearance procedures which would risk premature divulgence of packaging innovations which are not patentable. Manufacturers would be most reluctant to invest substantially in new product research if their competitors might share in its benefits immediately through inadvertent, even unintentional, leaks which could occur even with strong efforts toward security in pre-clearance procedures by administrative agencies.

Another strong danger to innovation in packaging is inherent in the proposed discretionary power to standardize package size by administrative fiat rather than by the traditional economic interplay of complex management factors.

Such involved technical considerations as packaging line efficiencies and engineering of packaging materials are extremely difficult to assess accurately, even by experts who live with these problems day-to-day. The practical problems involved in adopting even units of package weight or volume are great and added manufacturing costs involved in this particular kind of standardization would likely more than offset any benefits consumers might realize from this.

In summary, we believe that manufacturers and the packaging industry have already done an outstanding job of assisting consumers in making rational decisions through quality comparisons made possible by brand name merchandising, by providing adequate information as to quantities, ingredients and use, by differentiation to speed up recognition on long, crowded shelves and by extensive packaging research to improve keeping quality, ease of storage and use, and other elements of attractiveness. "Clearly deceptive" abuses are few, as evidenced by the difficulty the Food and Drug Administration and the Federal Trade Commission have had in establishing evidence of this in selected cases. Finally, the added short-range costs of uneconomic, irrational standardization and long-range costs to consumers of restriction would more than offset any improvements made in the limited instances where abuses have existed. Further, costs of administering this program would be great, and problems in administering such a complex program in a manner equitable to all segments of the trade and the public would be almost overwhelming.

We would appreciate it if this statement can be included as part of the record of hearings on these bills.

Sincerely yours,

KENNETH D. NADEN,  
*Executive Vice President.*

---

CONSUMERS LEAGUE OF NEW JERSEY,  
*Montclair, N.J., July 25, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
U.S. House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: The Consumers League of New Jersey supports wholeheartedly your fair packaging and labeling bill, H.R. 15440. We believe the bill will allow the housewife to spend her household allowance more wisely and to make a selection of products with less frustration.

When trying to determine what is the best buy for her money, the shopper is confronted in the stores with a confusing variety of sizes and prices which make comparisons difficult.

As an illustration I am giving the experience of one of our board members. Just this past week she found in one supermarket the following sizes and prices on detergents:

**Bold :**

Regular size, 1 pound 4 ounces.....	\$0. 32
Giant, 3 pounds 1 ounce.....	. 77
King, 5 pounds 4 ounces.....	1. 29

**Duz :**

Giant, 2 pounds 7 ounces.....	. 74
King, 4 pounds 6 ounces.....	1. 04

**Rinso :**

Regular, 1 pound 4 ounces (labeled "5 cents off" regular price).....	. 27
Giant, 3 pounds 2 ounces (labeled "10 cents off").....	1. 29

**Cheer :**

Giant, 3 pounds 6 ounces.....	. 77
King, 5 pounds 12 ounces.....	1. 29

On behalf of the shopper is it too much to ask manufacturers to agree on a standard size for packages bearing similar terms. Can't regular, giant, and king mean the same number of pounds or ounces?

Another practice which the shopper finds hard to understand is the "cents off" label on packages of some foods, household products, and toiletries. Why if the label reads "5 cents off the regular price" is this not considered the regular price? And who benefits from this "saving"? Prohibition of this practice will do away with this double talk.

The section in H.R. 15440 which requires net weight statements on a prominent display panel will be a boon to the shopper who now searches top, bottom, and all sides of various products looking for this information.

Under the provisions of H.R. 15440 the housewife will benefit financially and industry will regain the shoppers confidence in accurate descriptions and pricings of products.

We request that this letter be placed in the record of the hearings.

Sincerely,

Susanne P. Zwemer  
(Mrs. R. A.) SUSANNE P. ZWEMER,  
President.

\_\_\_\_\_  
MARYLAND CONSUMERS COUNCIL, INC.,  
Severna Park, Md., July 28, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. STAGGERS: The Maryland Consumers Association, Inc. wishes to go on record as supporting the proposed Truth in Packaging legislation which we understand is now under consideration by your Committee.

While we would be agreeable to the adoption of Senator Hart's Bill (S. 985) we would prefer the Bill you have sponsored HR 15440.

We will appreciate your consideration and offer our support.

Yours truly,

\_\_\_\_\_  
W. W. FALCK,  
Secretary-Treasurer.

\_\_\_\_\_  
ASSOCIATION OF CALIFORNIA CONSUMERS,  
Oakland, Calif., August 5, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,*  
*House of Representatives,*  
*Washington, D.C.*

MY DEAR CHAIRMAN STAGGERS: Please advise your committee, and include in the record of your current hearing if you consider it appropriate, that the Association of California Consumers urges the House Interstate and Foreign Commerce Committee to approve your bill, H.R. 15440.

Our members—individuals, labor unions, cooperative marketing associations, and other groups—are convinced that consumers are misled by existing packaging practices, and that the Fair Packaging and Labeling Act is essential to the fair and efficient functioning of a free market economy.

Under existing conditions:

1. It is hard (sometimes impossible) to find a clear statement of net weight.
2. Some consumers are confused by meaningless descriptions like "tall", "giant", "jumbo", "family size", and "economy size".
3. Consumers are irritated by "cents off" offers (cents off what?).
4. There is no standard for what constitutes "a serving". Packagers adopt different standards, and often fail to indicate whether the "serving" is considered adequate for a child, a hungry teenager, a working man, or an old lady.
5. We deplore the profusion of fractional weights, which make it impossible to compare prices, and all too often are a device by manufacturers to conceal a reduction in quantity of a package that shoppers believe familiar.
6. Consumers should not be misled by packages that are obviously designed to look bigger than they are.

California's many low income consumers have special and additional problems. Wasted money means real hardship to them, and many find it difficult to read labels.

We urge you to approve this bill, with all provisions against deceptive packaging. We hope that your committee will refer H.R. 15440 to the House in time for a vote this session.

Respectfully submitted.

ROBERT R. BARTON,  
*Executive Secretary.*

---

THE COOPERATIVE LEAGUE OF THE USA,  
*Washington, D.C., June 29, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Cooperative League of the USA has followed closely in recent years the efforts of Senator Hart and other leaders to get a workable "truth in packaging" bill enacted. At the biennial sessions of the Congress of the Cooperative League of the USA those attending have passed strong resolutions favoring a bill such as was passed recently by the Senate.

We like even better your own bill on the subject soon to be considered by the Committee on Interstate and Foreign Commerce, because it is a stronger bill.

Members of the Cooperative League Congress which passed the enclosed resolution represent over 16 million families in every state in the Union. We want you to know our organization is solidly behind you in your effort to get a strong truth-in-packaging bill enacted.

Sincerely yours,

SHELBY EDW. SOUTHARD,  
*Assistant Director, Washington Office.*

#### RESOLUTION 22—CONSUMER INFORMATION

Consumers are entitled to information they need to make rational, intelligent decisions in the marketplace for the wisest and most efficient use of labor, raw materials, and capital. They are entitled to more informative labeling and advertising, to greater standardization of package sizes and component parts, to full disclosure of credit terms, to meaningful product designations and standardized nomenclature, and to enforceable guarantees and warranties. Much of this they must necessarily achieve through federal and state governments. . . .

---

NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.,  
*Washington, D.C., August 2, 1966.*

Congressman WALTER ROGERS,  
*House Office Building,  
Washington, D.C.*

DEAR MR. ROGERS: In behalf of the 46,000 members of the National Association of Social Workers may we urge your support of the Fair Packaging and Labeling bill (H.R. 15440) now before you as a member of the House Interstate and Foreign Commerce Committee.



In 1962, our Delegate Assembly adopted the following policy:

"Consumers should be protected against misrepresentation concerning the nature of products offered for sale, against dangerous products, against unfair price-fixing, and should receive governmental aid in informing themselves concerning their interests."

At a time of national concern for the plight of the impoverished, we see this legislation as being of jumbo, economy-size benefit to the low-income, unsophisticated family.

Sincerely,

MELVIN A. GLASSER,  
*Commission on Social Action.*

KANSAS STATE CHAMBER OF COMMERCE,  
*Topeka, Kans., August 9, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Kansas State Chamber of Commerce endorses the testimony scheduled to be given August 11 before the House Committee on Interstate and Foreign Commerce by a representative of the Chamber of Commerce of the United States on packaging and labeling legislation. (An advance copy of this material was sent to us for examination.)

It is the opinion of the Kansas State Chamber of Commerce that the labeling part of the bill (H.R. 15440) is essentially a duplication of present labeling laws, and is not necessary. The packaging, or standardizing, part of the bill is potentially very dangerous. It could mean higher costs and increased consumer food prices. It could also block packaging innovations designed for consumer convenience. This part of the bill, in our opinion, should be eliminated.

We feel that the best answer to consumer complaints regarding packaging and labeling would be vigorous enforcement of the present FTC and FDA laws. The agencies admit they have the authority but have not given it a very high priority. They should be instructed to implement fully their present laws.

Please place in the record of the hearings of your committee on packaging and labeling legislation this position of the Kansas State Chamber of Commerce.

Sincerely yours,

O. C. KILKER,  
*Executive Vice President.*

THE NIAGARA FALLS AREA  
CHAMBER OF COMMERCE,  
*Niagara Falls, N.Y., July 19, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Interstate Commerce Committee,  
House Office Building, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Niagara Falls Area Chamber of Commerce is by reason of its basic purposes and objectives a believer in the American Free Enterprise System. We solicit your support of this belief, especially with regard to H.R. 15440, Packaging and Labeling Controls which is presently before your committee.

Our National Legislative Action Committee chaired by George M. Tuttle, Comptrollers' Staff, Moore Business Forms and composed of thirteen business and professional men and women of the Niagara Falls area have considered this bill at two separate meetings. A complete research report was done by the Subcommittee for Federal Controls Over Business, chaired by Warren Hardy of the Carborundum Company.

The following facts were submitted to the Board of Directors:

1. Consumer protection against packaging and labeling is presently available under the provisions of the Food and Drug Act, The Fair Trade Act and various state laws. Full implementation of authority provided for by these statutes should be accomplished prior to consideration of more restrictive legislation. Then if a deficiency is revealed, additional legislation could be considered.

2. Under provisions of this bill, authority would be granted to appointed administrators to draft requirements as well as enforce them. Thus elected representatives would be abdicating their right and responsibility to legislate.

3. The Free Enterprise System, upon which our economy is founded, would suffer immeasurably from the effects of this bill since its provisions go beyond prevention of abuses by controlling packaging methods, labeling and most marketing activities.

4. Packaging standardization will bring about the regimentation and stifling of healthy market competition. The standard size provisions of the bill will impose on industry added costs for new machinery, packaging materials and new designs. This would lead to higher consumer prices. One local industry estimates that conformity with this provision would cost many millions of dollars, since one packaging line alone represents an investment of \$350,000.00.

Because of the foregoing reasons, the Board of Directors of the Niagara Falls Area Chamber of Commerce at its board meeting on July 13, 1966, unanimously adopted the following recommendation:

"The National Legislative Action Committee recommends to the Board of Directors that the Niagara Falls Area Chamber of Commerce go on record in opposition to HR 15440, Packaging and Labeling Controls."

We urge your support to strengthen the American Competitive Economy by opposing HR 15440, Packaging and Labeling Controls.

We would appreciate a response from you stating your position on this matter.

Cordially yours,

WILLIAM H. CUMMINGS, *President.*

---

CITY OF BUFFALO,  
BUREAU OF WEIGHTS AND MEASURES,  
*Buffalo, N.Y., July 8, 1966.*

HON. T. J. DULSKI,  
*New House Office Building,  
Washington, D.C.*

DEAR CONGRESSMAN: Being in the field of Weights and Measures Administration, I believe there is a need for uniformity in labeling in the packaging of commodities in order to give the consumer a better idea of what he is buying.

However, it appears to me that in the "Truth-in-Packaging" Bill there are some things that I do not agree with, such as:

Marking of packages in *ounces only*. In New York State a declaration of quantity shall be expressed in terms of the largest whole unit. Part 221.4(e), New York State Weights and Measures Manual which I am enclosing, along with the Laws of New York State for Weights and Measures. (The documents referred to will be found in the committee files.)

With this new method of marking packages, it will weaken the effect of the Weights and Measures official because we have told manufacturers, packers, etc. to discontinue the practice of marking in ounces only. Now we will have to tell them to revert back to their old method again. Manufacturers, packers, etc. will wonder if we know our job.

Also, there are many people buying commodities that do not know how many ounces there are in a pound or a quart, so with just marking in ounces they will not know if they are getting a pound or a quart. Thus, they will not be aware of the amount they are paying for.

Should be included in bill:

Marking of the quantity statement should be on the front principal display panel, in one uniform place, either in the upper right or left corner of the principal panel with the following recommendations for the printing:

1.  $\frac{1}{8}$  inch in height for area up to 40 sq. in.
2.  $\frac{1}{4}$  inch in height for areas up to 120 sq. in.
3.  $\frac{1}{2}$  inch in height for area from 120 sq. in. and over.

4. The printing of the quantity declaration be free from all other printing on this panel.

5. The color of the printing of quantity is not to blend with any other color statement on the display panel, nor with color or printing in contrast to color of background.

6. The printing shall be of plain nature.

The gimmick that manufacturers mark on packages, a certain amount off (3¢ or 4¢) should be abolished from all commodities in packages, because what is to stop the seller from marking up his price by this amount—therefore, the buyer is not realizing a saving.

Also, the other method of marking a full pound, full quart, economy size, family size, etc. should be eliminated. No qualifying phrase which tends to exaggerate the amount of commodity should be permitted. Sec. 221.4(i).

Packages should be marked as to Net Weight standardized to read  $\frac{1}{4}$  or  $\frac{1}{2}$  ounces, not  $\frac{3}{8}$  or  $\frac{5}{16}$  ounces or any odd reading.

Very truly yours,

LEO A. McNAMARA, *Sealer.*

SOUTH CAROLINA STATE CHAMBER OF COMMERCE,  
*Columbia, S.C., June 27, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Interstate and Foreign Commerce Committee is scheduled to consider H.R. 15440 and S. 985 to regulate consumer packaging and labeling. May I respectfully forward to you the statement of policy as adopted by the Board of Directors of the State Chamber concerning packaging and labeling controls:

"Present curbs on deceptive packaging and labeling are contained in the Food and Drug Act and the Federal Trade Commission Act. Any further corrective legislation at the Federal level should not be enacted until enforcement of present laws and regulations has revealed some important deficiency.

"Legislation recently introduced in Congress is so broad that it would regiment packagers to such extent that consumers' freedom of choice would be restricted."

We urge your careful study of the need for any further restrictions of consumer packaging in the light of sufficient safeguards already written into Federal law.

Sincerely,

JOHN G. RIDDICK,  
*Administrative Manager.*

PENNSYLVANIA STATE CHAMBER OF COMMERCE,  
*Harrisburg, Pa., August 30, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Pennsylvania State Chamber wishes to advise you of its endorsement of testimony presented before your committee on August 23rd regarding H.R. 15440 and S. 985, the so-called "truth-in-packaging" bills, by Max Banzhaf for the Chamber of Commerce of the United States.

The crux of our opposition to this kind of legislation is found on page 2 of the enclosure, which is a portion of the U.S. Chamber's statement. In brief, we feel that: (1) existing law, if properly enforced, would be adequate to protect the consumer from unfair and misleading merchandising methods; and (2) these bills would be harmful because certain of their provisions would not only unnecessarily increase production costs and consumer prices, but would also reduce variety in production and restrain packaging improvements.

Your favorable consideration of our views in this matter is respectfully requested.

Yours sincerely,

ROBERT J. MIDDLETON,  
*Secretary, Government Operations and Expenditures Committee.*

SEALTEST FOODS,  
*Schenectady, N.Y., May 23, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Interstate and Foreign Commerce Committee,  
House Office Building,  
Washington, D.C.*

MY DEAR REPRESENTATIVE STAGGERS: You have been, I am sure, concerned about S. 985, the so-called "Fair Packaging and Labeling Act." Such a bill, apparently motivated by a desire to protect the consumer, in my humble opinion, proposes extreme remedies for yet unproven deficiencies in existing law.

I do not believe S. 985 is wisely motivated, or necessary. Even sponsors of such a bill must surely recognize that all of their constituents, particularly those directly affected by it, do not believe the Federal controls proposed in S. 985 are necessary. It is conceded by all concerned that the dairy industry deals in the most standardized and regulated food on the market. The industry itself, over the years, has succeeded in the voluntary standardization of the great majority of dairy packages, labeling is specific and adequately protects the consumer, package sizes have been standardized, and on the basis of packages and labeling, the consumer is materially aided in making her buying decisions. It would appear then, that such a bill aimed at food packaging and labeling in general will do nothing more than impede growth and expansion of this vital segment of the food industry.

There are some solid arguments to advance in support of this contention and if you will permit me, I should like to transcribe some of these for your consideration, as you wrestle with the pros and cons of this proposed legislation.

1. Additional control and legislation is not necessary, particularly when existing authority over packaging and labeling has not been fully utilized.

2. Abuses can be prevented or at least minimized by present laws, without disturbing those segments of the food industry who have thus far voluntarily standardized and controlled their package labeling and package sizes.

3. Available data questions the validity of the proponents' statements for the bill, that consumers without this needed legislation are unsatisfied with packaging and labeling of consumer goods, and are confused and deceived. Must we relegate this nation to one of complete uniformity and deny to it variety and choice by judgment? Isn't the regulatory goal of complete uniformity more in character with a state-controlled society than with a free society?

4. Such complete regulation over packaging and labeling, as set forth in S. 985, even in its form today, after an obvious effort was made to make the measure more palatable to industry, seems startlingly adverse to the interests of both business and consumers, and it remains a completely unnecessary and potentially very injurious piece of legislation.

5. Section 5 would authorize FDA to promulgate regulations for food labels to show ingredients and composition. This means that whenever an ice cream manufacturer changed from cream to butter, or cream to whole condensed, or changed his ingredient sources in any way to take advantage of a price break or supply situation, new containers with new ingredient labeling would be necessary. In an industry already beset with disastrously low price and profit margins, this additional packaging expense would make continuation in business impossible.

6. Economies of packaging would be further seriously affected by the bill's proposed standardization of weights of competing brands.

7. The bill would ban the use of "cents off" or "economy size" labeling, which do indicate money saving opportunities to the consumer.

8. Standardization of shape, size, color, etc. of packages would serve to restrict creative research within the free enterprise system, which has helped thus far to make this nation great, and made available to its citizens a variety and multiplicity and quality of products unmatched by any other nation in the world. It seems to me that the whole bill's concept of regulation is out of character with our free enterprise system.

For this, and other reasons as enumerated above, I would urge you to exert every influence within the power of your great office to defeat S. 985.

Respectfully yours,

F. M. SKELTON,  
*Manager, Production and Quality Control.*

RED & WHITE CORP.,  
*Chicago, Ill., July 29, 1966.*

HON. MR. HARLEY O. STAGGERS,  
*Chairman, House Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D.C.*

DEAR SIR: On behalf of our distributors serving over 2,500 independent retail food dealers in 26 states, we wish to register opposition to S. 985 currently before your committee because

1. Existing legislation is adequate to accomplish its stated purposes.

2. It could be administered in a manner that would increase the cost of food to the public.

Major factors in the food industry registered opposition to this bill with appropriate documentation during the Senate Committee hearing. Our position is set forth in the attached statement prepared by the writer and to which your consideration is respectfully urged.

Sincerely yours,

LEO J. BUSHEY, *President.*

STATEMENT OF RED & WHITE CORP. ON S. 985

Hearings on Senate bill S. 985 were scheduled to start this week before the House Committee on Interstate and Foreign Commerce. It has been referred to as a "Truth in Packaging" bill which is unfortunate as the name is mislabeling. Every right minded person is for truth in the packaging of foods, drugs and cosmetics. The fact is, however, that the regulations proposed in S-985 which are directed to this purpose are primarily repetitions of regulations promulgated by the U.S. Food and Drug Administration years ago under powers authorized in legislation enacted in 1938. Examples are listed below.

1. Net contents must be stated on the main display panel of packages in terms of the largest applicable unit. Thus if avoirdupois applies and the weight is 1 pound, it is illegal to use the statement 16 ounces. Similarly, 1 pint may not be stated as 16 ounces.

2. Packages may not be deceptively designed to mislead the purchaser as to their capacity. Under this regulation, the long established practice of using bottles with thick glass panels and long necks for flavoring extracts was prohibited. Numerous other deceptive practices have also been eliminated.

3. Slack fill packages are illegal under present regulations.

4. The name and address of the manufacturer, packer or distributor is presently required and the label must accurately state the relationship to the product of the party named.

5. Standards of identity have been established for a large number of commodities stipulating permissible ingredients and minimum percentages of those which affect quality—Examples Mayonnaise Dressing, Corned Beef Hash.

6. The packages must display a list of the ingredients used in the order of their preponderance on products for which Standards of identity have not been established by the U.S. Food & Drug Administration.

7. Labels are required to use the common English Name in identifying contents and if the package is of foreign origin, this must be clearly stated.

Stripped of its duplications of existing regulations, S-985 seeks to achieve objectives of questionable worth. These are set forth in Section 5.

Section 5 encourages the administering authorities to advance the concept of packaging to standardized weight units and provide authority and procedures under which their decisions may be imposed upon industry. This is an unneeded and improper delegation of authority over industry which in execution could increase prices and add new confusion in the market place.

Increase costs: Present high levels of efficiency in food packaging with resulting savings in production costs are achieved through the use of high speed, automatic packaging machinery. Such equipment is economic only when it may be used on a wide variety of products packaged in containers of uniform dimensions. This results in a variation in net weights per package reflecting the varying relationships between weight and bulk of the products involved. Extensive use of this highly sophisticated equipment has become possible through standardization of packages by dimensions which over the years has evolved within multi-product organizations or from commodity oriented associations such as the National Canners Association.

Much of the cost saving achieved through the use of this automatic equipment could be sacrificed if standardization by weight is substituted for the existing practice of standardizing by package dimensions.

New market confusions: The proposed standardization by weights would create new confusions as great as those it is presumed to correct as to real values.

Household laundry detergents have been frequently mentioned as an example of the problem which the legislation is designed to correct. Presumably, with uniform weight packages a shopper would need only to check the price marks and instantly determine which brand is the best buy. Nothing could be further from fact.

The cost and the value of a given weight of laundry detergent can vary over a wide range. It could consist of nothing more than simple trisodium phos-

phate—an effective wetting agent to remove soil. However, the modern homemaker needs and expects a much more complicated chemical compound. In addition to soil removal, she expects

1. Water softening characteristics
2. Bleaching action
3. Soil suspension capability (so the soil stays in the water and is not re-deposited in the clothes)
4. Suds Control—to avoid damage to the washer and to protect sewers and streams against excessive detergent suds
5. Uniform performance throughout the package—which means that a simple physical mixture of the ingredients is not adequate. They should first be blended in liquid form—then spray dried.

To suggest that weight alone is an adequate means of establishing the relative value between various brands of detergent is to mislead and confuse the shopper.

Similar multiple quality factors apply to the majority of food, drug and cosmetic products and in many instances, their importance greatly exceeds that of the single factor "weight" in establishing the true value of a package. Undue emphasis on weight can therefore be misleading.

Progress toward the standardization of packaging should remain a matter for voluntary action on the part of industry to encourage maximum production efficiency and the broadest exploration of shoppers' needs and preferences as to both packaging and products.

---

UNITED STATES WHOLESALE GROCERS' ASSOCIATION, INC.

*Washington, D.C., August 25, 1966.*

HON. HARLEY O. STAGGERS,

*Chairman, House Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.*

DEAR MR. STAGGERS This association represents on a nation-wide basis the interests of wholesale grocers who serve food retailers, and institutional distributors whose customers are food service operators.

It is of considerable concern to us that one of the packaging and labeling bills, S. 985, now being considered by your Committee, contains a provision which we believe places upon the wholesale and retail distributor an unfair and unreasonable liability. I refer to paragraph 2 of Section 3(b) of that bill which provides that "persons engaged in business as wholesale or retail distributors" are brought under the penalty of the law if they "prescribe or specify by any means the manner in which such commodities are packaged or labeled." In its broad meaning, this would make it necessary for wholesalers to become packaging and labeling "experts." In reality, it would be most impractical and unreasonable to place such responsibility on a segment of business other than that which performs the actual packaging and labeling operations.

In truth, the United States Wholesale Grocers' Association looks with disfavor upon enactment of packaging and labeling legislation that will impose unwarranted interference with private business enterprise. Our view is that present laws and regulations, if enforced, would adequately protect the consumer, and further legislation is therefore unnecessary.

While we are confident your Committee will fairly evaluate the proposals presently under consideration, we are hopeful the ultimate determination will be that such packaging and labeling legislation is not needed. Should this not be the case, we earnestly urge that your Committee consider the impractical application of Section 3(b) (2) or S. 985, and act to delete it from that bill.

Respectfully,

HAROLD O. SMITH, Jr.,  
*Executive Vice President.*

---

WHOLESALE STATIONERS' ASSOCIATION,  
*Oklahoma City, Okla., August 29, 1966.*

HON. HARLEY O. STAGGERS,

*Chairman, House Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.*

DEAR SIR: We understand that S. 985, The Administration Bill on Packaging and Labeling now under consideration by your Committee, applies to any person engaged in packaging or labeling which, according to our interpreta-

tion, makes all wholesale or retail distributors liable regardless of whether or not they do any packaging.

We urge that S. 985 be amended to relieve wholesalers of any responsibility for compliance with packaging and labeling of consumer commodities unless the wholesaler-distributors do the packaging and labeling themselves. They should not be required to be experts in the law when the packaging and labeling is performed by others. We feel the company that actually does the packaging and labeling should be held responsible and not the wholesaler or distributor.

Sincerely yours,

RALPH R. MOSEB, *Secretary-Treasurer.*

---

NATIONAL MILK PRODUCERS FEDERATION,  
*Washington, D.C., August 24, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: The National Milk Producers Federation is a national farm organization. It represents dairy farmers and the dairy cooperative associations which these farmers own and operate and through which they act together to process and market, on a cost basis, the milk and butterfat produced on their farms. The dairy cooperatives represented through the Federation market practically every form of dairy product produced in the United States in any substantial volume.

The Federation respectfully requests that the enclosed amendment to subsection 5(c)(4) of H.R. 15440 be adopted by your Committee. The intent of this amendment is to make clear that the rules and procedures for the listing of the ingredients and composition of a food for which there is a definition or standard of identity prescribed by the Federal Food, Drug, and Cosmetic Act or by any other Act of Congress are in no way changed or superseded.

Presently, under section 401 of the Federal Food, Drug, and Cosmetic Act, definitions or standards of identity may be promulgated for any food. Such definitions or standards of identity may provide for the permissive use of optional ingredients, which, if used, must be named on the label. No labeling is required where the ingredients used comply with the prescribed definition or standard of identity. Thus, rather than require a confusing listing of the number, names, and proportions of active or costly ingredients, the Congress enacted by statute, or authorized under the Federal Food, Drug, and Cosmetic Act, definitions or standards of identity which would assure the consumer that competing products would not have varying proportions of standard ingredients. By enacting these statutes which established definitions and standards of identity for certain foods, Congress protected consumers from the evil of economic adulteration by which less expensive ingredients were substituted, or the proportion of more expensive ingredients diminished, so that the resulting product was inferior to that which consumers expected to receive.

Requiring labeling of ingredients and composition of foods for which there is a definition or standard of identity prescribed by Federal regulation would only serve to increase costs to consumers since the evils of unfair methods of packaging, labeling, or composition have already been corrected by the Congress.

There is, therefore, no need to alter the protective measures that Congress has already provided consumers through the Federal Food, Drug, and Cosmetic Act, and other statutes which establish definitions or standards of identity for foods.

It would be appreciated if you would make this communication a part of the record of hearings on this subject.

Sincerely,

E. M. NORTON, *Secretary.*

PROPOSED AMENDMENT TO H.R. 15440

On page 7, line 4, strike out all to and including line 10, on page 7, and insert in lieu thereof the following:

"(4) require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity,

except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act or established by any other Act of Congress, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets; and"

ANDERSON, CLAYTON & Co. FOODS DIVISION,

Dallas, Tex., August 2, 1966.

Hon. HARLEY O. STAGGERS,

Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the hearings being held by your Committee on H.R. 15440 and S. 985, a number of questions have been raised concerning the possible impact that regulations under Sections 5(c) (5) and 5(d) (2) of H.R. 15440 would have upon manufacturers, distributors, and consumers of grocery products. The proponents of this legislation have insisted that there is need to authorize the Federal agencies to adopt container standards specifying size and shape and establishing the weights or quantities in which a commodity may be packed for sale. They have insisted that such regulations would benefit consumers in that they would facilitate price comparisons and prevent deception as to the quantity of the contents of packages.

A number of industry witnesses, on the other hand, have pointed out the inherent disadvantages in any compulsory container standardization program. In this regard, we believe it may be of help to your Committee for us to illustrate briefly how such regulations might have adversely affected consumers if they had been in effect in recent years.

For several years Anderson, Clayton & Co. worked on the development of a soft margarine which would comply in all respects with the Standard of Identity for margarine, but which could be easily spread immediately after removal from the refrigerator. The development of this product necessitated finding solutions to a number of problems, and it was not until 1964 that we were able to undertake test marketing.

It was our view that consumers acceptance of the product would be enhanced if it could be packed in half-pound plastic tubs. Quite obviously the standard packaging for margarine—four quarter-pound sticks—would be wholly inappropriate for a soft margarine; some rigid form of container was necessary.

The test market program led us to believe that the product would be popular with consumers, and accordingly we went into national distribution in 1965. Our experience has shown that the product has been even more popular than we imagined, and that consumers find highly desirable the unique form and properties of soft margarine packed in half-pound tubs.

It was not surprising, therefore, that our competitors, seeing our success with this new form of margarine, moved to develop their own soft margarine, but of course this could not be done overnight. By mid-1966 every one of our major competitors had on the market at least one soft margarine product. Nevertheless, we have continued to enjoy an advantage in the marketing of this product because of our initial development work and our greater experience in production and marketing of soft margarine. Indeed, the knowledge that we would have an initial market advantage—however temporary—over our competitors, if the product proved to be successful, was a major factor in encouraging us to develop the product and to find solutions to the problems presented.

As we understand the packaging control provisions of H.R. 15440, they would authorize the adoption of regulations which would specify the size and shape of packages for particular commodities, and specify the weights or quantities in which a commodity could be packed. If these provisions had been enacted a number of years ago, and if regulations had been adopted on the basis of general industry practice in packaging margarine, the regulations would have required that margarine be packed in quarter-pound sticks contained in a one-pound carton.

With such a regulation on the books, it would have been necessary for Anderson, Clayton, & Co. to obtain an amendment to permit the packaging of



margarine in half-pound tubs. Obviously the proceeding for an amendment would have resulted in the complete disclosure of Anderson, Clayton & Co.'s marketing plans to its competitors, months, and perhaps years, in advance. The net effect would have been that Anderson, Clayton & Co.'s competitors would have had time to work out their own solutions to the problems this product presented after they were put on notice that Anderson, Clayton & Co. intended to market it. Our company would have been deprived of any initial market advantage, and indeed our competitors might have been able to delay, or perhaps to block altogether, the necessary amendment to the regulations.

We believe that this one example illustrates precisely why our company opposes any compulsory container standardization provisions. Inevitably such regulations would penalize innovation, discourage investment in research and product development, and delay the introduction of new products and containers. Consumers would quite clearly be deprived of many of the benefits they now receive from new products and new packages.

We sincerely hope that your Committee will give careful consideration to these proposals, and that any legislation that may be reported will contain no compulsory container standardization provisions.

Respectfully submitted.

CLAUDE T. FUQUA, Jr.,  
*President, Foods Division.*

---

INSTANT POTATO PRODUCTS ASSOCIATION,  
*Chicago, Ill., September 6, 1966.*

HON. HARLEY STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
Rayburn House Office Building,  
Washington, D.C.*

DEAR MR. STAGGERS: The instant potato industry is one example of the tremendous advancement in convenience foods in the past few years. It was not until granular potatoes, as we know them today, were developed after World War II that the industry began its rapid growth, and its greatest expansion has come since the development of the potato flake process by the Department of Agriculture less than ten years ago.

This rapid development in technology has meant that the consumer now has the choice of a number of types of instant potatoes—potato granules, potato flakes and potato buds; and the development work for new instant potato products is continuing every day. Its purpose is to provide the American consumer with an easily and rapidly prepared potato dish.

The differing bulk of the various types of instant potatoes has necessitated a variation in packaging. This variation, plus a difference of opinion as to the size of serving, created a problem which has been brought to the attention of your Committee in the hearings on H.R. 15440. However, the witnesses who presented this information did not also present to your Committee the fact that the instant potato industry has been aware of this problem and has taken steps to correct it.

When it was brought to the attention of this association that the United Department of Agriculture had published a recommended serving size, i.e. one-half cup (approximately four ounces), it provided the industry with a common base from which to eliminate some of the uncertainty that existed during the early rapid growth period of the industry.

On January 25, 1966 and more fully defined on April 26, 1966, the Instant Potato Products Association adopted the consumer servings standards which were recommended by the United States Department of Agriculture, as is indicated in the attached statement. (See attachment A.)

The important consumer marketers of the industry, whether or not members of the Instant Potato Products Association, have been canvassed as to their compliance or intent to comply with these standards.

The Association is pleased to report that eight industry firms are now complying with these adopted standards and four industry firms intend to comply with their next resupply purchase of packaging materials. Still another firm believes it is in compliance with the standards definition since their package recipe instructions suggest a range of servings per box, bracketing the standard serving size adopted by the Association.

The firms canvassed comprise well over 80 percent of the instant potato products consumer market and probably over 90 percent. The Association believes that, since virtually all markets are now in compliance with the adopted standards, the consuming public will soon benefit from the common serving size.

The benefits from the research to produce a better instant potato product are not limited to consumers in this country, however. Because of the economy, quality and nourishment value, low transportation costs and less perishable nature instant potato products are playing a more and more important role in the critical food needs of the world. This is of particular importance, because in many countries the satisfaction of this need is a major problem.

This has provided a tremendous opportunity for American Agriculture and Industry to team up to solve this problem of the underprivileged of the world.

We are most appreciative of the opportunity to present this information and have assumed the privilege of directly advising selected members of your committee, whose states have direct and substantial interest in instant potato products, of the contents of this letter.

It is respectfully requested that this letter be placed in the hearing record.

Very truly yours,

RAYMOND D. JONES, *President.*

(ATTACHMENT A)

STATEMENT OF SERVING STANDARDS

During the regular meeting of the Instant Potato Products Association held January 25, 1966, the following principles were unanimously adopted and, on April 26, 1966, were more fully defined on behalf of the Association in compliance with the Model State Weights and Measures Regulations of the National Conference of Weights and Measures and Food and Drug Administration regulations:

1. The Instant Potato Products Association is opposed to any and all packaging which misleads the consumer.
2. Instant potato products should have the name of the product and the net weight shown on the front of the package.
3. The net weight statement should be in clean type with good color contrast and in size at least as large as provided for in the Regulation.
4. The net weight statement should not be qualified.
5. Mandatory labeling information not required to be shown on the front of the package should be together at a convenient location elsewhere on the package for the consumer's benefit.
6. Packages should be substantially filled, recognizing that the protection of the product, satisfactorily sealing the package, variations in density due to a great variety of unavoidable circumstances, and the tendency on the part of some products to break and realign themselves may result in what appears to be other than completely full packages at times.

In addition to the above principles, the following was also adopted by the Instant Potato Products Association as a principle for good consumer packaging:

Statements as to the number of servings in a consumer package may be helpful to the purchaser where the basis of serving is one consonant with the servings generally used or recommended by cookbooks or the United States Department of Agriculture:

(a) In the case of instant mashed potatoes, the one-half cup volume (approximately four ounces by weight) is recognized as an appropriate serving.

(b) In the case of dehydrated specialty potato products, such as scalloped and au gratin potatoes, the one-half cup volume (approximately four ounces by weight) is recognized as an appropriate serving.

(c) In the case of other specialty potato products not covered in the preceding standards, the appropriate serving definition would be one-half cup volume. Further weight specifications will be defined on the package back, according to the nature of the product.

FAIRMONT FOODS CO.,  
Omaha, Nebr., July 1, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives,  
Washington, D.C.*

DEAR SIR: It has come to our attention that the Senate has recently passed the "Fair Packaging and Labeling Act" (S. 985) and that a companion bill identified as HR 15440 has been recently introduced in the House of Representatives and referred to the House Commerce Committee for consideration.

We have carefully studied the provisions of S. 985 and have formed the strong conviction that it represents both an undesirable and an unwarranted intrusion on the part of our Federal Government into America's food marketing system.

Among other things, S. 985 implies that food processors are taking advantage of consumers through the use of various deceptions with respect to package size and weight and with respect to printed material contained on the label, and that the typical American housewife is confused and even somewhat bewildered by the endless variety of products on the grocery store shelves.

The implication in S. 985 that the average consumer is some kind of hopelessly gullible person is simply not true. The American housewife knows what she wants and precisely what it is worth to her. Long ago, businessmen discovered that if they fail to provide her with what she wants at what she considers to be a fair price, they will soon find her selecting a competitor's product. We firmly believe there is no more effective way to keep the food processor in line.

With regard to food processors taking advantage of consumers through deception, there already exist comprehensive regulations under the present Federal Food, Drug and Cosmetic Act which fully equips the FDA to halt such practices, and, in addition, the Federal Trade Commission Act which fully equips the FTC with authority to protect consumers and competitors from all unfair methods of competition and from unfair or deceptive acts or practices.

It appears clear to us that S. 985 is not the product of a bona fide ground swell of consumer complaints, but rather an effort on the part of certain governmental agencies to expand their power to regulate and even regiment the American marketing system. We strongly oppose legislation of this kind for the reason that it seeks to remedy illusory evils in a manner which is likely to seriously hamper competitive innovations and reduce substantially the consumer's area of product choice.

Very truly yours,

P. F. SEIGER,  
*Financial Vice President.*

---

PROCESSED APPLES INSTITUTE, INC.,  
New York, N.Y., August 1, 1966.

Re H.R. 15440, S. 985; packaging and labeling bills.

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, Rayburn  
House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: As President of the Processed Apples Institute, Inc., and in behalf of its member companies, I respectfully urge your distinguished committee to consider carefully the bills H.R. 15440 and S. 985 before approving the type of regulation they propose. Please accept this statement in lieu of personal testimony at the current hearings before your committee.

I

To the extent that these bills may introduce a modernized national law for a conspicuous quantity declaration on consumer commodities we would approve them. But Congress should spell out the specific provisions along lines of the Model State Weights and Measures Act and Regulations. We have long supported the uniform models. It would be a keen disappointment if these bills were to grant a general authority without Congressional guidelines which would require the agencies to issue uniform regulations.

## II

We urge also that your committee enact a truly voluntary procedure for standardization of package quantities or sizes. In present form this procedure is actually a mandatory one. It threatens not only arbitrary and restrictive standardization but a long and expensive prospect of controversy and litigation. Worse still, compulsory standards may operate to forfeit important economies presently available by packing to standard volume where differences in product density inevitably result in some fractional weights.

The consumer will certainly suffer a contraction of her freedom of choice under the proposed standardization rule. And industry incentives for creative experimentation and innovation will be destroyed by the practical necessity of first obtaining a publicized clearance of any new and useful idea before introducing it.

## III

We find that the proposal to regulate cents-off and related promotions is still objectionable. Existing law adequately empowers the agencies to prevent any use of retail price promotions which is fraudulent, deceptive or misleading. The pending bills, however, would direct the issuance of regulations simply "to facilitate price comparisons". This is a new and undefined formula, the meaning of which will take many years to develop. Meanwhile, the phrase may be invoked to suppress the very price competition which our national policy encourages. We urge the committee to prevent such miscarriage of authority which is granted to benefit consumers.

## IV

We are disturbed by the fact that these bills introduce an entirely new system of trade regulation—one which does not seem compatible with our legal tradition of objective regulation or with our system of dynamic competition in a free market. The PAI has always endorsed strong food and drug laws and related objective trade regulatory statutes. We find strange and objectionable the proposed regime of control by administrative regulations having the force of law, especially where such regulations proceed under the mandate of the narrow formula of "facilitating price per unit comparisons". We fear that such a major departure from traditional forms of American law may make it difficult, if not impossible, for Congress later to reassert its legislative prerogatives in this important field of regulation. For these reasons we ask the committee to withhold approval of the packaging and labeling bill until they are revised to conform with traditional principles of trade regulation.

Respectfully yours,

THOMAS RICKENBACK, *President.*

---

CONSOLIDATED ORCHARD CO.,  
Paw Paw, W. Va., July 6, 1966.

Representative HARLEY STAGGERS,  
*Chairman, House Commerce Committee,*  
Washington, D.C.

DEAR MR. STAGGERS: For some time commercial apple growers of West Virginia have been concerned over certain parts of Senator Hart's packaging and labeling bill S. 985 and we now hear that you have introduced a similar bill in the House, H.R. 15440 and that this proposed Legislation is scheduled to come before the Commerce Committee July 11th.

We are particularly concerned over the fact that your bill will give the Government added powers to standardize package sizes, shapes and dimension. This provision was in Senator Hart's bill S. 985 but was fortunately dropped before leaving the Senate.

Passage of a bill containing this provision may for instance make it so we could only put apples on consumer packages weighing say 3 or 4 lbs., under rigid size, shape and dimension, specifications promulgated and enforced by government agencies.

This would make it so consumers could lose much of their freedom of choice at the produce counter and progressive packers and marketers of fresh fruits could

be forced to relinquish one of our most useful and effective, merchandising tools, namely original imaginative packaging ideas.

We are acquainted with that part of the bills language stating that the rules will reflect *voluntary* industry standards designed to limit and specify package sizes, etc., however, our long experience with Federal regulations has taught us that such language is often twisted in the hands of people serving with insufficient experience and practical knowledge of the product involved, thereby becoming *arbitrary*.

It will be much appreciated if you will kindly use your great influence as Chairman of the Commerce Committee to delete the dangerous provision referred to above from your bill as was done when Senator Hart's Bill was under consideration.

With kindest personal regards, I remain,  
Most sincerely yours,

HENRY W. MILLER, Jr., *President*.

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.,  
New York, N.Y., July 29, 1966.

Re H.R. 15440.

HON. HARLEY O. STAGGERS,  
*House of Representatives,*  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: The Society of the Plastics Industry, Inc., formally organized and incorporated in the State of New York in 1937, is comprised of companies responsible for approximately 85% of plastic industry sales, dollar-volume wise. By far the majority of the member companies of the Society are properly classed as "small businesses" engaged in the manufacture of plastic materials and the fabrication of finished products therefrom, including plastic containers and plastic film for wrapping, both of which play such a vital and integral part in the manufacture, distribution and retailing of food products in the market today.

The plastic food packaging industry points with pride to the advances in food distribution made possible by the development of packaging materials made with plastic. The ability of the plastic food packaging industry to develop new and attractive packaging designs and shapes has contributed greatly to the national economy and success of the industry in being responsive to consumer demand.

As regards the referenced legislation, the Society strenuously objects to the provision contained in Section 5(c) (5) of the House version of the present Administration's "truth in packaging" Bill, (i.e. H.R. 15440), which would presumably give the "promulgating authority" the power, in certain instances, to regulate the size, shape and/or dimensions of retail packages.

The Society is of the belief that ample safeguards against deception of consumers with respect to "amount of content" in packages are contained in both the Federal Food, Drug, and Cosmetic Act, as amended, and the Federal Trade Commission Act. We therefore strongly urge the deletion of Section 5(c) (5) from the aforementioned House Bill, as was done in the Senate Bill, S. 985. The Society supports the limitation clause contained in Section 5(c) (1) of both the House and Senate Bills to the effect that the authority to establish and define standards for characterizing the size of a package "shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity." This limitation will not inhibit implementation of the purposes of the Act but will preclude the imposing of arbitrary or unreasonable restraint on the ability of the industry to innovate in package design, provided Section 5(c) (5) is duly deleted by the House, as it has been by the Senate.

We do hope you will give serious consideration to the position set forth herein for the record of your Committee, and that you will press for a House Bill which will conform with the amended version of S. 985 as passed by the Senate.

Very truly yours,

WM. T. CRUSE,  
*Executive Vice President.*

## ARKANSAS STATE PLANT BOARD.

*Little Rock, Ark., June 24, 1966.*

Congressman WILBUR D. MILLS,  
House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN MILLS: We have recently received several contacts from Weights and Measures Officials over the nation who are becoming very concerned with some of the provisions in the so called "Truth In Packaging" legislation. This name perhaps has been changed to "Fair Labeling and Packaging", which I believe is now Senate Bill No. 985.

It is our understanding that Senate Bill No. 985 has been passed by the Senate and is now before the House for consideration.

We have not had an opportunity to study the latest revisions to this legislation, as we do not have a copy of the bill that passed the Senate. However, we are being advised that a section in the bill creates total Federal pre-emption, and that passage of this legislation would nullify much of the efforts of the National Conference on Weights and Measures, which has worked long and hard on a Model Weights and Measures Law and Model Regulation to supplement that Law.

At a meeting May 10, 1966 in Washington with representatives of the Federal Agencies having package labeling responsibilities, the committee on Liaison with the National Government of the National Conference on Weights and Measures, of which I am chairman, discovered that the Federal regulations pertaining to package labeling require considerably less than is required by the "Model Regulation Pertaining to Packages", which is the product of the National Conference on Weights and Measures, and is the present Arkansas Regulation pertaining to package labeling.

As you are aware, the Arkansas Weights and Measures Law is the "Model State Weights and Measures Law", which was enacted by the Arkansas General Assembly in 1963, and became effective July 1, 1963, and prior to that time, the state had not previously had a comprehensive Weights and Measures program.

Our original findings in 1963 were met with some resistance and were quite revealing. However, we have found during the past two years that when the industries affected by our work discovered that we were sincere in our efforts to gain compliance with the Law, and that we were conscientious in our efforts to be of as little inconvenience as possible to those who must revise their methods of operations, we have had excellent cooperation by industry, and a great deal of progress has been made in this regard.

The 51st National Conference on Weights and Measures is to be held July 11-15, 1966 at the Brown Palace Hotel in Denver, Colorado, and as I am sure you are aware, this conference is the meeting place where State and local Weights and Measures officials meet with industry representatives under sponsorship of the National Bureau of Standards for the purpose of promoting uniformity of the Laws, Regulations, and enforcement procedures in all matters pertaining to Weights and Measures. In the short time that we have been involved in a Weights and Measures program, we have found the National Conference on Weights and Measures to be one of the most worthwhile endeavors that exists in the nation at this time, and if Senate Bill 985 would nullify the efforts of the National Conference in any way, or if this bill would create Federal pre-emption on package labeling requirements, it is our opinion that the bill should not be approved in the House, as this, in our opinion, would be a big step backward.

We know from past experience, Congressman Mills, that you will be taking care of our interests in the National Congress, and we have complete confidence in what you can do when undesirable legislation comes before the House for consideration, and your efforts in this regard are appreciated very much.

If, after studying Senate Bill 985, you feel that this legislation would create Federal pre-emption, and nullify the many years of work that have gone into the "Model State Weights and Measures Law" and "Model State Regulation Pertaining to Packages" by the National Conference on Weights and Measures, which are now in effect in Arkansas, it will be most appreciated if you will keep our interests in mind when this bill comes up for consideration in the House.

If we can be of assistance to you with this matter, or in any other way, Congressman, please do not hesitate to contact us.

Sincerely,

ANDREW L. LITTLE,  
Director, Division of Weights and Measures.

HYSAN PRODUCTS Co.,  
Chicago, Ill., June 28, 1966.

HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Rayburn Office Building,  
Washington, D.C.

GENTLEMEN: We understand that your Committee has before it, a bill similar to Senate Bill 8-985, entitled "The Fair Packaging & Labeling Act".

We wish to protest one of the aspects in this bill, namely that aspect which applies to weights and quantities which permit unit price comparisons. We feel that it would require an unnecessary expense which we in turn would have to pass on to various distributors, and they in turn would have to pass on to various Industrial, Institutional and Commercial users, if we had to change all of our labels to conform with an administrative edict which would decide what the proper weight and size would be for a given product.

We also fear that this would be the opening wedge to total package standardization. In short, we are opposed to having the Federal Trade, or Food & Drug groups specify what "reasonable" weights or quantities should be because we feel that between manufacturers, distributors and the public, this can most readily be accomplished.

We would appreciate your considering our position on this matter.

Yours very truly,

JOEL BROWNSTEIN, *Vice President.*

---

THE OHIO VALLEY BAKING Co.,  
Chillicothe, Ohio, July 8, 1966.

HON. HARLEY O. STAGGERS,  
House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: At the risk of seeming anti-social and against "truth", I would like to point out some objections to the Truth in Packaging Bill now before the Interstate and Foreign Commerce committee. First, the popular name of the bill implies that there is a substantial amount of untruth in packaging—hence the need for the bill. I submit that there is a small percentage of crooks in any field at any time and all the complicated regulations that are proposed will not be one whit more effective in making them mend their ways than the present laws are. Second, as a person interested deeply in the food business (which is one of the major targets of the bill), I doubt that consumers are dissatisfied with the protection they now have. I have heard dozens of people comment that they think the package of an item should be changed to fill a specific need but, I have *never* heard anyone complain that packaging is so misleading as to prevent a reasonably intelligent shopper from deciding if an item is a good buy. For example, I have received many comments that the person would prefer a larger or smaller package of an item but never a complaint that it is difficult to determine what constitutes the best buy in the bakery field.

I submit that people buy items to fill a need and that quality and convenience are just as important in filling the need as is the price per ounce. I also submit that the people can and will judge effectively whether a given product satisfies them. Therefore, it seems to be basic that Members of Congress should concern themselves with preserving the greatest number of alternative choices for the consumer instead of passing legislation that would authorize an administrator to control weights to make price per ounce comparisons easier.

I think the unrealistic character of the legislation is pretty well summarized by the part that calls for a "serving" of any product to be established and defined. Obviously most 16 year old boys would want a serving of much greater size than that preferred by a 75 year old woman. For that matter there would probably be a considerable difference in the amount of food considered a serving by a 150 pound bookkeeper versus that wanted by a 225 pound construction worker even though they are of the same sex and age.

Certainly no one can quarrel with requirements that packages be labeled clearly as to their contents. It is not my intent to oppose the requirements of the bill relating to net weight even though they may be a bit arbitrary and complex.

Please remember that this bill could substantially reduce the amount and type of choices by the consumer in the market place. The consumer has done a good job of deciding whether a product is a good enough buy to warrant purchase.

Every manufacturer has had items that failed to get a sufficient number of repeat sales to warrant keeping the product on the market. I submit that this is the most effective way to decide the question of value of a consumer item.

Sincerely yours,

PHILIP C. PIERSON, *President.*

SUNBEAM BAKERIES,  
Baton Rouge, La., June 27, 1966.

HON. JAMES H. MORRISON,  
Old House Office Building,  
Washington, D.C.

DEAR REPRESENTATIVE MORRISON: I understand Bill S-985, "Truth in Packaging", will come up in Congress in the near future. This Bill will work a tremendous hardship on bakeries and will be very costly. It authorizes a requirement to list on the wrapper each ingredient and the percentage of each ingredient contained in the finished product. The ingredients used in a loaf of bread depends on each year's wheat crop, the flour mill that grinds the wheat, and the section of the country where the wheat comes from. Proteins and minerals from each section of the country wheat is grown vary. They also vary in each section from year to year due to the heat and rain during the growing season and the fertilizer used by the farmer. Also, there is a variation between spring and winter wheat grown. A blend of these wheats is used in flour, and the percentage of each changes with the age of the wheat when milled and the quantity of each year's crop. These wheat variations affect the percentages of every ingredient used in bread. Our bread formulas must be changed several times a year to adjust to the wheat.

We buy wrapping paper, cartons, labels, etc. in quantities to last eight to twelve months after the order is placed because the cost is much greater in smaller quantities. If this bill becomes law, we will have to buy these on a monthly basis or we will have to destroy the paper, etc. each time a change is made in a formula. The cost would be tremendous in either case.

We and the bakeries in this section of the country have succeeded in keeping the price of bread down in spite of the tremendous increases in cost of labor, flour, other ingredients, and social security taxes. We do not feel that we should be handicapped with this unnecessary cost.

We hope the above information will show you how impractical it is for this bill to pass and that you will vote and work against it. If you do not see clear to oppose the entire bill at least try to exempt bakeries from it.

Sincerely,

A. D. BURTON, *President.*

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,  
Washington, D.C., June 29, 1966.

HON. HARLEY O. STAGGERS,  
House of Representatives,  
Washington, D.C.

DEAR MR. STAGGERS: At NRECA's annual meeting in February, the Women's Activities Standing Committee asked delegates to support truth-in-packaging and other consumer legislation. The declaration of support, adopted without dissent, represents the considered opinion of this Association of 979 consumer-owned and controlled electric systems representing 4,726,004 consumer members in 46 States.

Since this resolution relates directly to the truth-in-packaging bills before your committee, we are enclosing a copy indicating the concern our members have for this consumer legislation.

Sincerely yours,

ERMA ANGEVINE,  
Women's Activities Coordinator.



## RESOLUTION ADOPTED BY OFFICIAL DELEGATES ASSEMBLED IN 24TH ANNUAL MEETING FEBRUARY 17, 1966

## CONSUMER PROTECTION

Whereas NRECA is an association of 979 consumer-owned and controlled electric systems, vitally interested in all matters affecting consumers; and

Whereas we recognize consumers have a responsibility in the economic life of this country to support with their patronage the honest and efficient producers and distributors who offer the best value for the lowest price: Now, therefore, be it

*Resolved*, That we support legislation that helps consumers fulfill their role in an intelligent and responsible manner by giving them access to clear, unambiguous information about products and services available for sale; and be it further

*Resolved*, That we support legislation that helps consumers shop for the best buy in credit by requiring a clear statement of the cost of credit and the annual rate of interest; and be it further

*Resolved*, That we support legislation that assures the safety of food, drugs, and cosmetics before they are offered for sale; and be it further

*Resolved*, That we reaffirm our support for full representation of the consumer in the highest councils of government and commend the President for again appointing a Consumer Advisory Council to work with his Special Assistant for Consumer Affairs; and be it further

*Resolved*, That we urge rural electric systems and their state and national associations to make consumer information available to their members.

ARKELL & SMITHS,  
Hudson Falls, N.Y., July 26, 1966.

Re Hart packaging bill S. 985.

Hon. HARLEY O. STAGGERS,  
Chairman, House Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.

MY DEAR MR. STAGGERS: During the time the Senate was considering subject bill I had written several times expressing my opposition to this legislation, and now write in opposition to your bill, H.R. 15440, that reportedly is very similar.

With all the State and Federal rules and regulations that cover this area already I don't feel that any additional legislation is required. Look what has already happened in another field. The attached fertilizer package is covered currently by all sorts of United States Department of Agriculture and State Agriculture Department regulations, plus those of the Interstate Commerce Commission for packaging. As you can see, it results in a package of which three panels are taken up in fine type in order to conform to these regulations. Even the suggested directions are required by regulations. I am afraid that if the legislation that you propose were to be added to the present F.T.C., F.D.A., and State law, the resultant package would be as confusing as this fertilizer bag. It would seem to me a better use of your time and monies would be served by instructing the presently existing Federal and State authorities to use the regulations that they have.

It has been said that this legislation is required to protect consumers. It would, in my opinion, have the opposite result. The adjustment of machinery and the changes in packaging that would be required would add additional costs to the products, which would have to be passed on to the consumer. Also, it always follows that additional regulations require additional administration. You and I, the consumer-taxpayer, pay these costs.

If your objective is to serve the consumer, have you adequately determined what she wants? If you standardize size I think you will aggravate the consumers. I know my wife often buys a certain size and amount of a product because of the amount that she will use in a certain period of time and where she intends to keep it. Maybe the standardized container would not serve her purposes, and other consumers, at all.

I understand part of your bill requires that products be labelled showing amounts in whole numbers. In other words 24 ounces instead of 1 pound 8 ounces. Does this make it easier for the consumer to compute the price per unit

question. It seems to me that it is just as difficult to divide it into S. 985 and S. 986 as it is to divide it into S. 984 and S. 985.

It is only the fact that we as a country have come from the Consumer Bureau days to the industry to save food and consumer products that are available at a minimum of the year to the consumer. I am afraid Federal intervention will be a source of confusion, duplication, higher costs and less variety of improved and new packaged products for the consumer. I urge you to let the National Packaging Institute or your Committee or a recommendation to reject S. 985.

Sincerely,

DAVID S. LAYNE  
Executive Vice President

THE BUCK BROTHERS TRADING CO.  
Wheeling, W. Va., June 22, 1966.

HON. HARLEY O. STAGGERS,  
House of Representatives,  
Washington, D.C.

DEAR MR. STAGGERS: It is our understanding that the "truth-in-packaging" bill recently passed by the Senate, will come before the House of Representatives for consideration within the near future. We are opposed to this bill for the following reasons:

(1) It would deprive directly regulated authority to the agencies charged with its enforcement and would subject industry to regulatory whim which would violate the law.

(2) In its present form it directly conflicts with state requirements now in force and consequently would require the removal of most labels presently in use on our products.

(3) There exists no limitation whatsoever on the power of agencies involved to require a statement of ingredients on the label of a commodity.

(4) The bill would permit the restriction of economy-size and cents-off label statements on a product-by-product basis—whether or not they are deceptive.

(5) The procedure established for detailing voluntary standards for packaging in cooperation with the Department of Commerce does not serve as a check on the power of the Federal Trade Commission or the Food and Drug Administration to adopt compulsory regulations.

(6) The bill ignores the present effective controls existing in Federal and state laws against deceptive packaging and labeling practices.

For these reasons, we would appreciate your earnest consideration of this bill when it comes before you and urge your opposition to its passage.

With reference to the hearings, your Committee will hold on this bill due to the expense involved, we are unable to have a representative appear to testify personally on our behalf. However, we believe that representatives and fellow members of the National Association of Manufacturers will appear, and their testimony will adequately reflect our views.

Very truly yours,

JAMES B. MCCLUSKEY, Secretary.

PAPERBOARD PACKAGING COUNCIL,  
Washington, D.C., July 26, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives,  
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is filed on behalf of the Paperboard Packaging Council in opposition to those provisions of S. 985, H.R. 15440, and related bills which propose to establish comprehensive and unprecedented Government controls over the packaging of consumer commodities. We respectfully request that this letter be included in the records of the hearings that your Committee is holding on these measures.

The Paperboard Packaging Council is an independent nonprofit trade association representing manufacturers and converters of paperboard packaging. A substantial proportion of the production of paperboard packages by these com-

panies is used for the packaging of consumer commodities as defined in these bills. The packaging controls proposed in this legislation would have a far-reaching impact upon the companies that manufacture and convert paperboard for packaging purposes, as well as upon their customers.

Our industry shares the view of other witnesses before your Committee that the provisions of existing State and Federal law are entirely adequate to prevent the manufacture, packaging and distribution of consumer commodities that are packaged or labeled so as to deceive the public. The Federal Food, Drug, and Cosmetic Act, the Federal Trade Commission Act, and over 100 State and local Food and Drug laws and Weights and Measures laws provide assurance that any commodity packaged or labeled in such a manner as to mislead consumers may be the subject of immediate and effective enforcement action. These laws require the affirmative disclosure on the label of information relating to the quantity, identity, and composition of consumer commodities, so that purchasers may be fully informed as to the products they wish to buy.

We will not unduly lengthen this letter by repeating the testimony of other witnesses who have explained in detail how existing laws provide wholly adequate protection. Instead, we will limit our comments to those provisions of these bills that would most directly affect the members of our industry as manufacturers and converters of paperboard for packaging purposes.

Perhaps the most significant aspect of S. 985 and H.R. 15440 is that for the first time agencies of the Federal Government would be authorized to promulgate standards that would effectively dictate the size and shape of packages for consumer commodities. Up to now, the consumer has been doubly served by a system under which manufacturers are free to develop new container sizes, materials, shapes, and dimensions that will meet new and changing consumer tastes and demands, subject only to the restriction that no container may be so formed, made or filled as to be misleading. In this manner consumers have been protected against deceptive packages that mislead as to the quantity of the contents, but at the same time they have benefited from the competitive development of new containers and materials for old and new products.

What need is there to regiment those tastes and demands of the consumer through the device of federal controls? Housewives are entitled to the freedom to choose the sizes and styles of packaged products that meet their needs, without intervention by arbitrary limitations of standardization. Considerations of convenience, appetite, individual taste and other factors are as much an influence as economy, and it is often the odd size package that meets these demands.

The container revolution that has been evidenced in our supermarkets in the past twenty years is ample evidence that consumers have appreciated and heartily approved the changes that have taken place over this period in the packaging of food and other grocery products. These changes have been the direct result of research, development, experimentation, and market testing, in a competitive atmosphere free of undue Government restriction and control. Manufacturers have been spurred by the desire to obtain an immediate market impact from the introduction of a new material or a new type of container, and to realize at least a momentary market advantage over competitors who do nothing more than imitate what the more creative and daring manufacturers try and find successful.

The paperboard milk container is just one example of a postwar packaging development that has proved immensely popular with consumers. In 1946, 97,000 tons of paperboard were produced for milk cartons; by 1951 this figure had reached 278,000 tons; and last year over three-quarters of a million tons were produced for the manufacture of this one type of container.

Another dramatic post-war development has been the unprecedented growth in the production of frozen foods—most of them in paperboard packages. The technology for freezing fruits, vegetables and other products has of course been available for many years, but it was not until paperboard container manufacturers came up with low-cost packages adaptable to high-speed production that the industry was in a position to compete effectively with other processing methods.

The proponents of S. 985 assert that this bill would not preclude the continued development of new containers and materials. But they nevertheless express a determination that fundamental packaging decisions must be made in the first instance by Federal officials—who would impose stultifying standards of sameness for all packages of a particular commodity.

The crippling effect of packaging controls and standards will result no matter how they are developed, and no matter what they are labeled. So-called "vol-

untary standards, based on a consensus of manufacturers, distributors and consumers, but subject to rigid enforcement by the FDA or the FTC, would penalize the dissident, stifle the innovator, and discourage research and development. No change could be introduced until both voluntary and compulsory regulations had been amended, after two lengthy proceedings, and only if competitors, distributors, consumers and Federal officials acquiesced.

The necessity of public disclosure months, and perhaps years, prior to market introduction of a new container could be enough in itself to eliminate much of today's research and product improvement, for competitors would be assured of the opportunity to adopt the new container at the same time as the innovating company. Any party who might be adversely affected by a new container could effectively postpone, or altogether prevent, its introduction by withholding approval, filing objections, demanding a hearing, and pursuing judicial review. Surely such roadblocks to product improvement and fair competition in the marketplace cannot be thought to serve the consumer.

We respectfully urge that your Committee re-examine the claims of the proponents of packaging controls. Are they in the public interest? What public benefit would they achieve, if any? At what cost, and at whose expense? Does Congress believe that competition in container development is of minimal importance to consumers? We are satisfied that an objective evaluation of these questions by this Committee will lead inevitably to the elimination of the packaging controls from this bill.

Respectfully submitted,

RUSSELL C. FLOW, *President.*

---

NATIONAL PAPER BOX MANUFACTURERS ASSOCIATION, INC.,  
Philadelphia, Pa., July 13, 1966.

Hon. HARLEY O. STAGGERS,  
House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: This letter is written to urge you, as Chairman of the House Commerce Committee, to vote against the provision in H.R. 15440, Section 5, which would authorize regulation of package size and shape. Our Association has testified before the Senate Committee and written numerous letters stating our concern over this feature of the bill, which was also originally proposed for S. 985.

Regulation of size and shape could eliminate such creative packages as the Valentine's box, Whitman's Sampler extension edge package, and many beautifully crafted boxes which are as much a part of the purchase as the product. We feel that, if there is need to regulate deceptive packaging, the FDA and FTC currently have sufficient power to proceed against defenders, without stifling creative ideas and non-standard attractive packages.

Sincerely yours,

NORMAN T. BALDWIN, *Executive Director.*

---

CONSOLIDATED PACKAGING CORP.,  
Wheeling, W. Va., June 9, 1966.

Hon. HARLEY O. STAGGERS,  
House of Representatives,  
House Office Building, Washington, D.C.

DEAR MR. STAGGERS: In our considered judgment, there are a number of valid reasons why the Packaging Bill of Senator Philip A. Hart should be changed substantially before becoming law.

First, it not only overlaps, but repeatedly contradicts existing and enforceable regulations and controls of Federal Trade Commission Acts, the Food and Drug Administration and countless individual state controls.

Secondly, in its present form, it establishes arbitrary not voluntary controls; will stifle if not completely eliminate competitive innovation; prohibit the necessary and justifiable language qualifying quantities; permit additional regulations by enforcement agencies with no conceivable restraint on degree of necessity; and seriously, perhaps permanently, thereby eliminating an essential ingredient in competitive business activity.

Finally, it will require a staggering investment in packaging machinery modifications and new installations, placing thousands of small manufacturers and processors, many in this state, in an unfair and completely untenable financial position.

May we urge your immediate study of this bill, passage of which will almost immediately raise production costs and consumer prices in all categories of packaged consumer goods.

Sincerely yours,

A. A. WERNER, *General Manager.*

---

CHESEBROUGH-POND'S INC.,  
New York, N.Y., July 1, 1966.

HON. HARLEY O. STAGGERS,  
*Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: We wish to take this opportunity to comment regarding H.R. 15440—the “Fair Packaging and Labelling Act” presently under consideration in your Committee.

We think the growth of Federal administrative bureaus in the last generation and the record of their enforcement of various laws passed by the Congress has been such to make it clear that any new authority granted will be exercised to the fullest possible extent and, we fear, probably beyond what this Committee may envision. In fact, we believe any future administrative decisions made under this bill will not be given judicial or congressional correction even though such decisions would have received an opposite decision if placed before your Committee here and now. It is for this reason that we are deeply concerned with the powers granted to the FDA and the FTC in this Bill.

Very few people in our industry, we suppose, would object to the provisions set forth in Sections 2, 3, and 4. But sections 5(c) (3), (4), and (5) as well as 5(d) set forth regulatory authority which, when exercised, could prohibit many legal and proper activities in which our company has engaged for years, thus inhibiting the future growth of our company and the industry.

While much of the first part of the Bill merely restates existing law, either state or federal, Section 5(c) (3) introduces a novel prohibition which can fundamentally affect our company. This section enjoins any statement on a package that the product “is offered for retail sale at a price lower than the ordinary and customary retail sale price” whether or not the statement is true. It is common practice in the food, cosmetics and toiletries industries for a consumer-products manufacturer to reduce his prices to the trade occasionally or temporarily and at the same time imprint on his package an indication of the reduction in price the retailer will make to the consumer. Because the price reduction is printed on the package sold to the consumer, and because the dealer's customary profit margin is generally preserved, the retailer will virtually always pass such “cents” savings on to the consumer.

We particularly urge rejection of Section 5(c) (3) for the following reasons.

1. It is unreasonable to prohibit relevant nondeceptive statements in selling the consumer. We believe that where manufacturers imprint a “cents-off” legend on their packages, the savings represented are passed on to the consumer. The consumer, accordingly, is in no way confused, she thinks she is getting a certain price advantage, and she actually gets it. To condemn this as illegal seems to abandon logic.

2. It deprives the manufacturer of a useful sales approach. Surveys show that women prefer the “cents-off” type promotion over all others. A manufacturer using the promotion then benefits because new customers will try the product and because the increased sales volume generated compensates him for the lower price he charges.

3. It will deprive the consumer of actual cash savings. It is apparent that no manufacturer will deliberately reduce his prices to the trade on an item which is meeting otherwise satisfactory sales acceptance unless this price cut can be promoted at point of sale. Consumers' savings formerly created by manufacturers' price reductions will disappear if this bill becomes law.

4. Popular consumer attractions like combination offers and premiums will be prohibited. The Bill certainly is broad enough to cover combination sales such as shaving cream with razor blades or hand cream with cold cream. These are generally offered at a price reduction and common sense dictates that the con-

sumer be made aware of this. To prohibit advising the consumer of the saving is in effect to prohibit the combination sale, since the manufacturer's incentive has been destroyed. The effect of this Bill on premiums is less clear but potentially of much wider import.

5. It discriminates against the small chain and independent store. The section permits a retailer with a private-label product to engage in the practices otherwise forbidden to manufacturers. Smaller drug and grocery units cannot afford private brands, and must rely on manufacturers for their products.

Section 5(c)(4) could create some unique problems within the cosmetic industry. Cosmetic firms almost entirely, and perhaps uniquely, sell their products on the basis of aesthetics and promise of personal charm with ingredients and composition being totally irrelevant and perhaps even distasteful to the consumer. Administrative determination that the percentage of lanolin in face creams or beeswax in lipstick or alcohol in perfume need be revealed on the label in order to facilitate price comparisons by consumers would only result in a lessened inclination to buy on the part of women.

Section 5(c)(5)—This provision, which had been stricken by the Senate from S. 985, the Senate companion to H.R. 15440, has substantial potential for mischief in the cosmetic industry. Perhaps in no other industry is so great a percentage of the cost of goods allocated to packaging as there. Sizes, shapes and dimensional proportions are matters of intensive study, research and design—not, however, with a view towards deceiving purchasers as to the net quantity but rather to create an aura thought pleasing to the consumer. Yet if this Bill were to be passed the enforcing administrative agency could have its file replete with cases charging deception if the administrator were to take the view that a package not substantially functional and utilitarian was per se deceptive.

Section 5(d)—This section introduces a procedure under which industry could be forced to standardize package quantity. When a companion provision appeared in S. 985 we wrote to Senator Magnuson, Chairman of the Committee considering the Bill, and explained how that Bill might prohibit using a jar of particular capacity to distribute related products of varying densities—all to the detriment of the company and consumers. We were happy to note that the Bill passed in the Senate took account of this problem and that your Bill has done so also. May we now raise another possible problem with respect to this Section, drawing once again from a factual situation in which our company finds itself. We produce MEASURIN Time-Release Aspirin. One tablet contains 10 grains of aspirin as distinguished from ordinary aspirin tablets which contains 5 grains. If an attempt were made through regulations to establish reasonable numbers in which tablets of aspirin might be sold, MEASURIN could easily suffer by being treated as if it were a 5 grain aspirin. Because MEASURIN is considerably more costly to produce, and must be sold at a much higher price per tablet, any attempt to regulate the number of tablets to be contained in a package could create severe marketing disadvantages for our company vis-a-vis competitors. We note that none of the criteria listed in Section 5(g) to be used by the agency promulgating regulations provide for a situation of this type.

We strongly urge you, therefore, not to report this Bill from your Committee without elimination of Sections 5(c)(3), 5(c)(5), 5(d) and modification of Section 5(c)(4) to specifically except cosmetic products from its coverage.

Very truly yours,

J. A. STRAKA, *President.*

VALLEY BELL,

Charleston, W. Va., July 9, 1966.

CONGRESSMAN HARLEY O. STAGGERS,  
House of Representatives Office Building,  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We know that you are giving S. 985 serious consideration. As a processor and distributor of dairy products and ice cream we are concerned about certain labeling provisions that would make it extremely difficult for an ice cream processor to live with.

We would appreciate your giving consideration to the following proposed amendment to S. 985. Any consideration you give this amendment will be sincerely appreciated by the Dairy Industry, not only of West Virginia but others as well.

Yours very truly,

J. WILLIAM MARTIN, *President.*

## PROPOSED AMENDMENT TO S. 985

It is proposed to amend Section 5(c) (4) of S. 985 by changing the period to a semicolon at the end thereof and by adding the following:

"Provided however, that no regulation shall be promulgated under authority of this section applicable to any food for which a definition and standard of identity has been established by Act of Congress or by regulation under the Food, Drug and Cosmetic Act, as amended."

---

CONTINENTAL CAN CO., INC.,  
New York, N.Y., August 3, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.*

DEAR REPRESENTATIVE STAGGERS: Because of our mutual interest in the packaging of consumer products, and the current attention being given to this subject by your Committee, it seems appropriate to write you expressing views which I have developed over a number of years engaged in the manufacture and marketing of packages.

No reasonable person can be opposed to "truth in packaging", or to the desirability of trends in business ethics which prohibit deception. There is concern, however, on the part of most of the consumer goods marketers with whom we work that the provisions of the bills now being considered by Congress unnecessarily duplicate other legislation, and would restrict the rate at which new consumer oriented packages could be developed and introduced.

It is no longer logical to consider packages solely as containers for transportation and preservation of contents. It is generally accepted by our industry and those we serve that packages must also assist in the use of the product, be convenient to handle and store, and assist in the efficient mass marketing methods epitomized by the supermarket.

Similarly, it is no longer true that "soap is soap", or that "canned peas are canned peas". Both these former commodities are now available in a variety of grades, quality levels, and with added ingredients and special properties put in to serve the needs of individual segments of the market. Quality standards vary between brands, with each attempting to appeal to that segment of the population interested in the brand's particular combination of properties, quality level, and price.

As a result, the housewife—at least, my wife—chooses virtually no product on the basis of price per unit of measure. But rather, she is concerned with value analysis, in which she also takes into account—based on her previous experience—the quality of the product, the appropriateness of the package size to her needs, whether the package features are, per se, valuable to her (the aerosol can is a prime example of package adding convenience), and whether the particular properties of the brand she selects are beneficial to her in doing the job at hand. All these factors she weighs against the price per ounce.

I feel it would be a mistake to include in any proposed legislation provision which would restrict manufacturers from selecting package sizes, configurations, and structures, and prevent them from tailoring package to product to meet the needs of that segment of the market to which they are trying to appeal.

A restriction on package sizes ending up in a standardization in certain acceptable net weights or cubic contents might have an equally harmful effect from the consumers point of view. Many consumer size food packages are tailored to produce a certain even number of servings. But, the number of ounces per serving varies greatly from item to item. Similarly, since the specific gravity of various products differs, a requirement that all meat products, for example, be "packed in 4-ounce containers" would result in a wide variety of can sizes, each differing from the next by a minute amount. The nature of the can manufacturing business is such that frequent change-overs of equipment to accommodate minor size changes is extremely expensive, and would have the effect of greatly increasing packaging costs and hence consumer prices.

It is my belief that the best protection the consumer has against deception is the huge investment consumer goods companies have made in brand franchises. We know from experience the tremendous lengths to which the major food and beverage companies go to protect the reputation of their brands. Surely, an irate housewife who has been deceived by the package is just as unlikely to be a repeat purchaser as one who has found the quality inferior.

I hope your Committee will take into account these observations, for it would seem unwise to pass legislation which was either unnecessary or would restrict the ability of American industry to improve its service to its customers—the American consumers.

Sincerely,

BRUCE SMART,  
Vice President, Marketing and Corporate Planning.

---

GENERAL MILLS, INC..  
Minneapolis, Minn., September 9, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: On May 7, 1965, on behalf of General Mills, I testified before the Senate Commerce Committee during its hearings on S. 985. At that time I defined what we believe to be the one basic truth of the food industry: The job of developing, producing, packaging, advertising and selling a product is never complete until the consumer is fully satisfied.

General Mills, as one of the three largest producers of ready-to-eat cereals and one of the leading manufacturers of cake mixes, is deeply concerned with S. 985 and H.R. 15440. In our own company we produce annually over one billion consumer packages and we use at least 63 different sized bags, boxes and other types of containers to bring our total line of products to the consumer.

Our principal substantive objections when I testified in May 1965 were directed toward the then mandatory prohibition of cents-off sales promotions and the establishment of standardized Federal packaging controls. With respect to cents-off, I am now satisfied that your Committee has established on the record the absence of any legislative intent to prohibit bona fide and legitimate sales promotions.

Concerning packaging controls, industry, whenever practical, has of its own volition undertaken standardization in the packaging of fungible products. For example, in the area of flour packaging, the flour milling industry supported the passage of a decimal weight bill by a number of state legislatures.

Such requires that flour containers in the 5 lb. to 100 lb. range be of 5, 10, 25, 50 and 100 lb. sizes.

But standardization of weights and packaging—when applied to prepared convenience foods—is not in the best interest of the consumer. For instance, the amount of cake mix in a package must be such as to fit customarily available pans. The amount must also be such as to require the addition of one, two or three eggs by the homemaker. It is difficult to subdivide an egg. The mix must also call for customarily and conveniently measured amounts of liquid, such as a half or a quarter cup. Too much or too little of one of the ingredients will produce an unsatisfactory cake.

The number of ounces in a cake mix also depends upon the particular combination of ingredients used. For example, we might consider a mix designed to make a two layer cake. We find 18½ oz. ideal for a regular white cake, but it requires 19½ oz. of mix for spice and apple cake. However, with a different formula, as much as 21 or 22 oz. may be required. This is not a matter of whim. It is dictated in large measure by the ingredients and the sizes of cake tins in normal use. In each instance, the amount selected represents the manufacturer's best judgment as to what is required to produce a satisfactory finished product with the utensils most likely to be used.

Our company makes 12 different ready-to-eat cereals from four basic grains (wheat, corn, oats and rice), plus a variety of other ingredients, such as sugar, cocoa, shortening, etc. These cereals have different shapes and processing methods. They include flaked, puffed, fortified, pre-sweetened, and unsweetened. The combination of various grains, the method of processing, the cereal shape, and the choice of sweetening levels result in end products with widely varying densities. For example, it requires only 12.8 cu. in. of space to accommodate an ounce of Jets, but we need 21.3 cu. in. to pack one ounce of Kix. Still, our company now uses one basic package in which we pack 12 different breakfast cereal products. The use of the same size package minimizes costs substantially. But because of the different densities of the products packed in this single package, the net weights may vary from 7 oz. for one low density product to as much as 10 oz. for the highest density product.



General Mills fully endorses the overall position expressed by Senator Lausche in the course of the Senate floor debate on S. 985 (see Cong. Rec., June 8, 1966, pp. 12068-12069), wherein he demonstrated the existing and full consumer protection coverage afforded by the Federal Food, Drug and Cosmetic Act, implementing regulations issued thereunder by the Food and Drug Administration, and the Federal Trade Commission Act. We subscribe to Senator Lausche's view that:

"Every time you pass a new law of this type, you create new bureaus with their plethora of public employees bringing about a scandalous, indefensible expansion of public workers duplicating the work that is already authorized under existing law." (*Ibid.*, p. 12069)

Private enterprise and the public interest would be stultified if it were subject to direction from those few consumers who still appear to be mistakenly oriented to the antiquated "price per ounce" test for purchasing in the market place. An attempt to dramatize this so-called confusion imposed upon the consumer was made before this Committee on July 29, 1966, during the testimony of Helen Nelson, California State Consumer Counsel. Mrs. Nelson presented to the Committee an exhibit of five packages of instant mashed potatoes which purported to demonstrate how a national manufacturer "concealed" a price increase by reducing the net weight of a product from 7.2 oz. to 5 oz. In addition, Mrs. Nelson claimed that although the quantity was less in each new package, each package stated that it made 8 servings. Mrs. Nelson's claims are totally misleading, and I can verify the actual facts because the purported example used by Mrs. Nelson was Betty Crocker Instant Mashed Potatoes. Although Mrs. Nelson testified that these packages did not represent a violation of law and were not deceptive (Tr. 311, 333), she created a false impression that the public buys, and the manufacturer therefore must sell, on the basis of cost per pound.

The above illustrated repackaging of instant mashed potatoes represented a continuing effort by General Mills to provide the consumer with the preferred fluffier-type of mashed potatoes. This effort resulted in our development of a major reformulation that achieved an entirely new form of product. Basically, there have been two forms of instant mashed potatoes—granules and flakes. When we entered the business in 1959, we chose the granule form. Our home surveys indicated a serving to be approximately one-half cup, consistent with the United States Department of Agriculture suggested definition.

Our granule-type product failed to please the consumer, despite repeated reformulations. These different formulae made it necessary to revise package weights from time to time, upward as well as downward. While the earlier product weighed more, the package always delivered at least eight half-cup servings of mashed potatoes.

Four years ago we instructed our researchers to look for a third form of instant mashed potatoes that would excel granules or flakes. About two years ago, the research group came up with Mashed Potato Buds from Betty Crocker—a product so superb that, after hundreds of home placement tests with homemakers all over the country, we knew we had a product that would make better mashed potatoes than homemade mashed potatoes.

Although more costly to produce, Mashed Potato Buds from Betty Crocker yield lighter and fluffier mashed potatoes, free of heavy lumps. Shortly after introduction, we enlarged our package slightly to accommodate a highly uniform, a somewhat less dense, and a larger mashed potato puff. Since the packaging was volumetric rather than weight system, we dropped our declared weight slightly from 5.25 oz. to 5 oz. to be conservative, but at the same time we filled these packages toward a target weight of 5.50 oz. A recent test in our Betty Crocker Kitchens showed our product delivers eight half-cup servings, and in fact was the most uniform of five brands tested. Our sales of this better product immediately gave us a larger share of the market.

The misconceived "cost per ounce" thrust of these legislative proposals ignores the single most determinative factor in a buyer's purchase decision—personal preference. The General Mills creamy frosting mix weighs twice as much as our fluffy frosting, but both will cover the same size cake. There is a difference in weight and volume between flake and puffed cereals. Servings vary so greatly between these two types of cereals that the theory of picking the best value by dividing price by weight simply does not—and will not—work. Simi-

larly, the housewife selects a cake mix because she thinks her family will like it, rather than because it weighs the most for the money spent.

In order to permit manufacturers to continue their research and develop more satisfying convenience foods for the consumer without being inhibited by the straitjacket regulations based upon "price per ounce," we respectfully urge your opposition to the enactment of this unnecessary legislation.

I am taking the liberty of sending a copy of this letter to all members of your Committee. I shall appreciate your cooperation in causing this letter to be made a part of the record.

Respectfully submitted.

E. W. RAWLINGS, *President.*

THE HOBART MANUFACTURING CO.,  
Dayton, Ohio, July 18, 1966.

HON. RODNEY LOVE,  
*House of Representatives,*  
Washington, D.C.

DEAR MR. LOVE: Many thanks for your June 23 reply to my letter of the third concerning the Hart bill.

In my efforts to find the answer to the question I raised, I overlooked a very serious defect in the bill. My attention was called to this during the National Conference of Weights and Measures, which was held in Denver last week under the sponsorship of the National Bureau of Standards.

I am referring to Section 4(a) (3) (A) which appears on page three line fifteen of the copy of S. 985 that you sent to me. I will quote this paragraph:

"(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

"(A) if expressed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole pounds, pints or quarts (avoirdupois or liquid, whichever may be appropriate);"

Please notice that this wording which for weight say ounces or whole units of pounds. Literal interpretation apparently prohibits the use of any fractional pounds such as a half or quarter pound, and also since it does not say pound *and* ounces, it apparently requires that a package weighing three (3) pounds five and one-half ( $5\frac{1}{2}$ ) ounces would have to be expressed as weighing 53½ ounces.

Fractional ounces are apparently permitted but apparently not limited as they are in the Federal Food, Drug, and Cosmetic Act to fractions that are generally used, and which are reduced to their lowest terms, and which if decimals are not carried out to more than two places. Thus, expressions such as 53-22/24 ounces are permitted. Since this act apparently supersedes everything in conflict with it, it would seem that this provision of the act reverses its basic objective of eliminating customer confusion.

In addition, to the general considerations mentioned above this also eliminates labels such as the one attached, which is typical of that produced by automatic scales made by ourselves and several of our competitors. This label has the weight expressed in decimals of pounds, in order to make possible the direct multiplication of this decimal expression by the price per pound in order to arrive at the true total price.

I would guess that there are 25,000 of these scales in use at a value of \$5,000.00 each. And while this act specifically exempts meat products their use for cheese, produce, and possibly fish and poultry would be prohibited by this part of the act.

I hope you will feel as I do that this paragraph has no merit of any kind or description that it should be completely eliminated or replaced by wording similar to, if not identical with that which appears on page 13 of the publication entitled *Federal Food, Drug, and Cosmetic Act As Amended and General Regulations for Its Enforcement Title 21, Part 1* (Act revised October 1962, Regulations revised January 1964).

I am sending this air mail as I feel that house action may be imminent, and I would appreciate anything that you do to keep this gross error out of the final bill. Many thanks and best regards.

Yours very truly,

KENNETH C. ALLEN,  
*Vice President, Scale Operations.*

FOSTER & DAVIES, INC.,  
Cleveland, Ohio, July 13, 1966.

HON. WILLIAM E. MINSHALL,  
*House of Representatives,*  
Washington, D.C.

DEAR MR. MINSHALL: I am concerned with the Fair Packaging and Labeling Bills soon to be considered by the House . . . and with some of the provisions in the recent bill passed by the Senate, S-985.

In my opinion many of the terms of this bill will be both difficult to carry out and costly. Created to "protect" the consumer, this law could, and probably will, give the consumer a bigger bill to pay.

Administration is bound to cost more, call for more taxes. Changes required of manufacturers could also be costly. Somebody has to pay the bill—obviously, the consumer.

Specifically, this bill potentially gives government a blank check to establish added regulations specifying weights and sizes in which a particular product can be packed (Sec. 5C).

It would permit unlimited regulations to require ingredient information on the label, even to the point of requiring full disclosure of closely guarded formula (Sec. 5(C)(4)).

It has other provisions which discourage legitimate merchandising practices that do not mislead or deceive the consumer. It would tend to inhibit the development of new products and product innovations. And it unnecessarily duplicates regulations already law.

Perhaps what concerns me most about this bill is that it seems to imply that all business is crooked and all consumers slightly stupid . . . concerned only with buying the most "units" for each dollar. This assumes all products of a kind to be alike . . . overlooks such differences as taste, quality and convenience. (And this last feature can be most important in the decision to buy.)

I hope that you may be minded to try to simplify the bill . . . to make it more workable, less costly to the consumer.

Sincerely,

M. R. DAVIES, Jr., *President.*

THE WASHBURN Co.,  
Worcester, Mass., July 15, 1966.

HON. HAROLD D. DONOHUE,  
*House of Representatives,*  
Washington, D.C.

DEAR HAROLD: I should like to urge your support of an amendment to the Truth in Packaging Bill—H.R. 15440—which would require that all packages of imported items, such as screws, metal nuts, rivets, hand tools, etc. made up in the U.S.A., be plainly and conspicuously marked in English with country of origin of the contents. Our Company has a great deal of competition from other countries, and this amendment would be a powerful aid in combating the misleading practice of unethical concerns of re-packaging many imported products and passing them off on the public as "Made in USA" products, with no marking on the packages to indicate country of origin.

Your favorable support of this amendment will be greatly appreciated by all of us at The Washburn Company.

Sincerely yours,

ROBERT G. HESS, *President.*

R-I-C PRODUCTS CORP.,  
Detroit, Mich., August 9, 1966.

Subject: "Truth in packaging" bill—Amendment to indicate country of origin of package contents.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, Rayburn House*  
*Office Building, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: I have written to you on this same subject on other occasions and again on behalf of our member manufacturers of hand tools, screws, nuts, tubular, split and solid rivets, we respectfully urge that you encourage and support an amendment to the Truth in Packaging Bill—H.R. 15440

*which would require that all packages of imported items, such as those mentioned above, be clearly and conspicuously marked in English with the name of the country of origin of the contents.*

The above suggested amendment is germane and completely in accord with the spirit and objective of H.R. 15440, which is designed to protect the public against misrepresentation through packaging of the thousands of products offered for sale in the United States. This amendment requiring marking of country of origin is badly needed *because of the growing and misleading practice of unethical concerns of repackaging many imported products and passing them off on the public as "Made in U.S.A." products with no marking to indicate country of origin.*

The above suggested amendment would also strengthen and make positive the marking regulations of the Federal Trade Commission and enable the Commission to effectively combat the misrepresentation of packaged imports as "Made in U.S.A." products.

Your support of the above amendment to H.R. 15440 will be greatly appreciated by all of our domestic manufacturers, employees and stockholders.

This letter is respectfully submitted in behalf of our manufacturing concern, and an early acknowledgment will be appreciated.

Yours sincerely,

VINCENT W. ADAMSKI  
Vice President, Industrial Sales.

E. I. DU PONT DE NEMOURS & Co., INC.,  
Wilmington, Del., July 22, 1966.

HON. H. O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: The purpose of this letter is to express our continued opposition to the enactment of S. 985, 89th Congress, which is now pending before your committee. We are also opposed to enactment of H.R. 15440, which is also pending before your committee and which includes the substance of S. 985 but adds further provisions.

The Du Pont Company is probably best known as a supplier of basic textile fibers, plastics, film, and chemicals to other processors. However, Du Pont also markets consumer goods in several fields, including paint, anti-freeze, and household and automotive specialties. The latter include waxes, sponges, cleaners, and motor additives. Therefore, the enactment of either S. 985 or H.R. 15440 would have a measurable impact on Du Pont's current operations.<sup>1</sup>

#### SENATE 985

Although the burdens imposed by S. 985 as originally introduced were made substantially less onerous as the result of amendments adopted by the Senate Committee on Commerce, we continue to believe that Section 5(d) of the bill as passed by the Senate is unwise and unsound. This section will authorize a federal authority to issue regulations establishing the weights or quantities in which consumer commodities shall be distributed for retail sale. No matter how deftly the proponents of this bill present their case, Section 5(d) will ultimately result in package standardization within retail commodity lines. Far from being a simple "weights and measures" type of legislation—so familiar at the state level—this feature of S. 985 is intended to shift the power of decision in an important area to still another federal "promulgating authority."

A great deal of testimony has already been presented to show that Section 5(d) of S. 985 will be costly to the consumer—both directly through an easily foreseeable multiplication of package and container sizes and indirectly as a matter of federal administrative expense. Despite the most strenuous efforts, no clear showing of need for the legislation has been made and no real public consensus favoring its enactment has been developed. Thus, Section 5(d) of

<sup>1</sup> We are aware that Senator Magnuson, Chairman of the Senate Committee on Commerce, stated on the floor of the Senate that S. 985 was not intended to apply to "paint and kindred products" (91 Cong. Rec. 11504). However, the bill as passed does not expressly exempt household paints and varnishes and others have pointed out that the language of S. 985 is clearly broad enough to encompass these products (95 Cong. Rec. 12165).

the "Fair Packaging and Labeling Act" is wasteful in the truest sense of the word since it increases costs to the consumer without conferring a commensurate benefit.

H.R. 15440

H.R. 15440 retains a provision (Section 5(c)(5)) rejected by the Senate Commerce Committee which would prevent the distribution of products "in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof (in terms of weight, measure, or count)." To the extent that this section would forbid packaging which is truly likely to deceive, it duplicates existing law. To the extent that it reaches something more, Section 5(c)(5) will result in product standardization and an end to packaging innovation.

For the foregoing reasons, we respectfully recommend against passage of S. 985, H.R. 15440, and similar legislation.

Very truly yours,

J. P. McANDREWS,  
*General Sales Manager, Consumer Products Division.*

---

LOS ANGELES, CALIF., July 22, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce,  
House Office Building,  
Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Compromise Hart-Magnuson Bill, S. 985, and its companion, the Staggers Bill, H.R. 15440, both before the House Committee on Interstate and Foreign Commerce, should, in our opinion, in the interest of consumers and the preservation of the competitive free enterprise system, be amended by the elimination of the quantity standardization provisions of sections 5(d), (e), (f), and (g).

The alleged purpose of the proposed legislation, "to prevent deceptive practices in packaging and labeling, which make it difficult for the consumer to determine the price per unit," is not accomplished by the above sections.

There can be no objection to printing the net contents in even pounds or even ounces, instead of expressing them in "1 lb. 4 ozs." and for same to be printed in conspicuous and easily read type. Sections 5(d), (e), (f), and (g) of the Bills, vesting in federal officials the power to limit the number of sizes in which a product could be sold, however, would not accomplish the alleged purpose of the bill, and would not benefit the consumer. The long range effect of these sections would be the elimination of the manufacturer (especially the small manufacturer and the new manufacturer) and the distributor catering to the wishes of the few, and the relegation of all processed foods to the commodity class, thus laying the ground work for the creation of a monstrous monopoly. It is just a step toward fulfilling the objectives of those who want all processed foods packaged uniformly, graded, and of one quality; who want to eliminate trademarks and brand names; who want to eliminate the creation of awareness of new foods through advertising; who want to eliminate the small manufacturer and the small dealer and distributor, leaving only large commodity-type producers and distributors; and who want to accomplish this regardless of the fact that the consumer would lose eventually and also would be forced to live in a regimented atmosphere.

The requirements of section 5(d), (e), (f), and (g) would have the effect of forcing the consumer to purchase products in sizes of packages determined by a commission and not determined by her desires or her use of the product. Manufacturers have found that the desires or needs of the consumer are not satisfied by one or two package sizes; and not all manufacturers cater to the entire market for their product—some cater to the desires of the large volume market and some to the desires of specialized or limited users of their product. There would be no economy for the consumer in such regimentation in that the main reason for the demand on the part of the consumer for different size packages is the elimination of waste by the consumer of part of the contents of a package which the consumer does not need or cannot use. Some consumers need, and some consumers merely want, to exercise their choice between products

of the same kind having different bulk densities—for example, instant potatoes processed by the flake method and processed by the granule method are finished products of different densities. A 1-lb. package could not reasonably be used for the two products, although they are both instant potatoes and have the same end use. Many products present this same problem.

The cost to the consumer of a dictated change in packages must also be considered. Carnation Company estimates that the change in the size of the container of only one of its products, evaporated milk, would result in a capital expenditure of about \$8,000,000.00. This cost would put a heavy burden on household budgets, and on the household budgets of those least able to bear such costs.

#### RECOMMENDATION

Easy unit price comparison can be more easily accomplished by a different approach, i.e., we recommend that section 5 (d), (e), (f), and (g) be stricken and that the section 5 (d), (e), (f), and (g) set forth in attachment A to this letter be substituted for those provisions.

The recommended alternative provisions would give the authorized agency authority, after hearing, to issue regulations requiring the manufacturer of a particular product to place two price blanks on the package, one marked "unit price" and the other marked "total price." The retailer would be required to stamp in those blanks the price per ounce, fluid ounce, pound, pint, etc., and the price of the entire package. The Commerce Clause would undoubtedly cover all retailers engaged in interstate business.

This method of labeling would present to the consumer a means of direct and immediate price comparison between competing products, whereas the unwieldy, dictatorial standardization of packaging proposed in the Hart-Magnuson and Staggers Bills would not.

Very truly yours,

CARNATION CO.,  
ROBERT F. DAILY,  
*Its Attorney.*

#### ATTACHMENT A

S. 985 AND H.R. 15440

#### SUGGESTED AMENDMENT, SECTION 5 (D), (E), (F), AND (G)

Strike from the Bill sections 5 (d), (e), (f), and (g), and insert the following new sections 5 (d), (e), (f), and (g) :

(d) Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the numbers, weights, or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons, such authority shall promulgate regulations requiring—

(1) that the labeling of every package of that consumer commodity shall include two blank spaces, juxtaposed, one marked "Unit Price" and the other marked "Total Price," and

(2) that each retail merchant, prior to display of any package so labeled for sale, shall place the appropriate price declaration in each of the price blanks on the package.

(e) Regulations promulgated pursuant to subsection (d) (1) may—

(1) require that the price blanks shall be in a light color compatible with the color scheme of the package and conspicuous in their setting on the label, and that the terms, "Unit Price" and "Total Price," shall be in a color in distinct contrast with the price blanks.

(2) establish reasonable minimum dimensions of each of the price blanks in relationship to the area of the panel of the package on which they are placed, such dimensions being uniform for all panels of substantially the same size, *provided*, that no regulation shall require that price blanks be placed on the principal display panel.

(3) establish reasonable minimum type sizes in which the terms, "Unit Price" and "Total Price," shall appear in the price blanks, bearing a reason-

able relationship to the dimensions of the price blanks and being uniform for all price blanks of substantially the same size.

(f) Regulations promulgated pursuant to subsection (d) (2) shall—

(1) establish reasonable minimum type sizes in which unit price and total price declaration shall appear in their respective blanks on the package, such type sizes bearing a reasonable relationship to the price blanks and being uniform for all price blanks of substantially the same size.

(2) require that unit price and total price declarations shall be in a color in distinct contrast with their respective price blanks.

(3) require that the denominator of the unit price declaration shall be stated in the smallest standard unit of the system of weight, measure, or count used in the net content declaration on the package.

(g) No regulation promulgated pursuant to subsection (d) (2) shall require that any unit price declaration be in terms more specific than the nearest single decimal place.

**SUGGESTED ADDITION TO SECTION 3 (B)**

"Labeling," as the term is used in this subsection, shall include the placing of price declarations on packaged consumer commodities by retail merchants.

**OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION,**  
Washington, D.C., August 11, 1966.

**HON. HARLEY O. STAGGERS,**  
*Chairman, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.*

**DEAR CONGRESSMAN STAGGERS:** The Oil, Chemical and Atomic Workers International Union, representing workers in almost every state of the Union, wishes to take this opportunity to go on record strongly in support of your bill, H.R. 15440, the Fair Packaging and Labeling Bill.

Our Union takes this position in recognition of the fact that many current packaging practices constitute, in effect, a hidden tax on the hard-earned wages of its membership. Such a "tax" cannot be tolerated in this time of rising prices. Passage of your bill would, we are convinced, effectively abolish this "tax".

We are dismayed at the smokescreen tactics used by opponents to obscure the simple intent of this bill and the ease with which it can be implemented. These opponents claim the bill will put them in a bureaucratic straightjacket. The truth is that the bill will simply remove the obstacles these same opponents have created to prevent shoppers from comparing prices.

Phony "cents-off" claims on labels, which are never passed on to consumers; fractional ounce weights, which make it nearly impossible to figure out per-unit cost; "Giant Economy" sizes which are more expensive than "Regular" sizes; and contents printed in tiny type, hard to read, and almost never on the front panel, are some of the practices which confuse consumers and cause wasteful expenditures.

Opponents also claim that packaging changes necessitated by this bill will raise the price of commodities bought by consumers. Since many of our members work in industries affected by this bill and witness the frequent packaging changes already being made, we find it hard to accept this argument. Our reluctance is strengthened by the fact that many present packaging changes seem to be made expressly to reduce the contents of the package and pass on a price increase to the consumer without his knowledge. These changes are occurring in greater number, and are all paid for by the consumer.

The Oil, Chemical and Atomic Workers International Union has always stood for truthfulness in its operations and negotiations. In this issue, it stands firmly with you for truth in packaging.

We respectfully request that this statement be made a part of the record of the hearings on H.R. 15440.

Yours sincerely,

**ANTHONY MAZZOCCHI,**  
*Director, Citizenship-Legislative Department.*

PRODUCE PACKAGING ASSOCIATION, INC.,  
Newark, Del., August 1, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The Produce Packaging Association, a national trade association representing the country's fresh fruit and vegetable packagers, views with much concern the probable effects on our industry if either of the proposed Packaging and Labeling Controls Bills (S. 985 and H.R. 15440) now before your Committee is enacted. For this reason, we respectfully request our position on this matter be noted by the Committee and be entered into the record of Committee hearings on these bills.

Frankly, we feel these bills are unnecessary. Present law adequately protects consumers with The Federal Pure Food and Drug Act, The Federal Trade Commission Act and the various state packaging and/or labeling laws. In addition, many of the mandatory requirements of these bills have already been incorporated in the Model Weights and Measures Law of the National Conference on Weights and Measures and has been adopted by many states.

Standardization features of these bills could regiment all packagers and drastically force less consumer choice in the supermarket. In many cases this restriction of consumer choice would increase packaging costs and lead to higher retail prices.

Flexibility, as well as innovation, is vital in the fresh fruit and vegetable packaging industry. The very nature of our highly perishable products and the fact that product size and shape is often dependent upon weather conditions, require a vast degree of flexibility. Some of the provisions of both S. 985 and H.R. 15440 could impair the growth of our industry.

One provision of both S. 985 and H.R. 15440 would unconditionally require the package label to identify the commodity. Label information as to the name of a commodity in a package is meaningless to consumers when that commodity can be easily identified through the wrapper or container. In the case of fresh fruits and vegetables, any requirement for commodity name information would appear appropriate only for packages that lack sufficient visibility for easy identification. Incidentally, you are undoubtedly aware, that the trend in recent years in produce packaging has been toward full product visibility. Our organization will be quite happy to provide more details on this trend or any technical aspect of fresh fruit and vegetable packaging if desired by the Committee.

Approximately one-half of the states have adopted the Model Weights and Measures Law. This law requires "... a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container ...". We feel this is more appropriate in the case of fresh fruits and vegetables than mandatory commodity information.

The Produce Packaging Association fully agrees that nonethical and dishonest conduct in the marketplace should be eliminated. The most capable "eliminator" in history, however, has been proven to be the consumer. Housewives register their disapproval where it is really noticed—in the pocketbook of the packagers or manufacturers by their refusal to buy.

Once again we reiterate our opposition to S. 985 and H.R. 15440, particularly in their present form. We urge the Committee to reject these bills in their present form or to consider an exemption for fresh fruits and vegetables.

Sincerely yours,

ROBERT L. CAREY,  
*Executive Director.*

LAKE ERIE SCREW CORP.,  
Cleveland, Ohio, August 9, 1966.

Subject: "Truth in packaging" bill—Amendment to indicate country of origin of package contents.

HON. WILLIAM E. MINSHALL,  
*House Office Building,*  
*Washington, D.C.*

CONGRESSMAN MINSHALL: On behalf of our member manufacturers of hand tools, screws, nuts, tubular split and solid rivets, we respectfully urge that you encourage and support an amendment to the Truth in Packaging Bill—H.R. 15440 which would require that all packages of imported items, such as those mentioned



*above, be clearly and conspicuously marked in English with the name of the country of origin of the contents.*

The above suggested amendment is germane and completely in accord with the spirit and objective of H.R. 15440, which is designed to protect the public against misrepresentation through packaging of the thousands of products offered for sale in the United States. This amendment requiring marking of country of origin is badly needed *because of the growing and misleading practice of unethical concerns of repackaging many imported products and passing them off on the public as "Made in U.S.A." products with no marking to indicate country of origin.*

The above suggested amendment would also strengthen and make positive the marking regulations of the Federal Trade Commission and enable the Commission to effectively combat the misrepresentation of packaged imports as "Made in U.S.A." products.

Your support of the above amendment to H.R. 15440 will be greatly appreciated by all of our domestic manufacturers, employees and stockholders.

An early acknowledgment will be appreciated.

Yours sincerely,

J. C. WASMER, Jr., *President.*

PORTLAND, OREG., July 22, 1966.

HON. HARLEY O. STAGGERS.

*Chairman, House Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: Because of the great difficulty and expense of appearing in person to testify on the provisions of the proposed packaging and labeling legislation now before your Committee, it is respectfully requested that this statement of our views be accepted in lieu of such appearance and made a part of the record of the hearings.

The Northwest Cannery and Freezers Association is a trade association of cannery and freezers of fruits and vegetables in the states of Oregon, Washington and Idaho. Its members, numbering 55 companies, account for approximately 85 to 90 percent of the total production of such products in these states. You will find attached to this letter a list of the present members of the Association.

The members of the Association by unanimous vote at their annual meeting held April 15, 1966 adopted a resolution opposing S. 985, the Senate companion to H.R. 15440, then under consideration by the Senate Commerce Committee. Copies of the resolution were provided the members of that Committee. Since the bill, as passed by the Senate, has not been changed in its fundamental concepts and provisions to any major degree, the resolution is equally applicable in its present form, and we therefore submit the attached copy of the same for your Committee's attention. We also specifically oppose the additional Section 5(c)(5) of H.R. 15440 regulating package sizes and dimensions.

Our views are in complete accord with those of the National Cannery Association, which will have one or more representatives appearing in person before you. To avoid repetition, we shall rely on the testimony of that Association to set forth the exact nature, point by point, of the objections of our industry to the adoption by the House of packaging and labeling legislation as proposed in H.R. 15440, S. 985, or similar bills now under Committee study.

We respectfully urge that these bills as presently constituted not be favorably reported to the House floor by your Committee.

By Legislative Coordinating Committee:

Sincerely yours,

NORTHWEST CANNERS AND FREEZERS ASSOCIATION,

C. R. TULLEY,

*Executive Vice President.*

L. V. WISE,

*Chairman, California Packing Corp.,*

N. W. MERRILL,

*Blue Lake Packers, Inc.,*

F. M. MOSS,

*Idaho Canning Co.*

Attest:

**RESOLUTION RE PACKAGING AND LABELING LEGISLATION ADOPTED AT ANNUAL MEETING OF NORTHWEST CANNERS AND FREEZERS ASSOCIATION, APRIL 15, 1966**

Whereas, There is now pending in the Congress a proposal, known, as the Truth in Packaging bill, which would empower the Food and Drug Administration and the Federal Trade Commission to adopt and enforce specified rigid regulations over the packaging and labeling of consumer non-durable goods; and

Whereas, This Association believes the subject bill goes far beyond existing law in authorizing unjustifiable intrusion of government into the economic basis for progress in a competitive society—the right of the individual to decide what he will offer to sell or what he will buy; and

Whereas, The rigid regulations authorized by the bill would tend to increase rather than decrease the prices of market-basket goods, would contribute to duplication of existing regulatory authority, would promote confusion and would stifle innovation; and

Whereas, This Association is not opposed to reasonable regulation of commerce in the interest of the consumer, and in fact supports in principle the present laws administered by the Food and Drug Administration and the Federal Trade Commission, and while it is recognized that existing laws may be in need of reinforcement in certain limited areas to promote the effectiveness of FDA and FTC in administration and enforcement thereof, nevertheless, we believe said laws are basically adequate to accomplish the legitimate objectives of the Truth in Packaging bill: now therefore

Resolved, By the members of the Northwest Canners and Freezers Association, in meeting assembled this 15th day of April, 1966, that we hereby request and urge the Congress—

(1) to reject the legislation as proposed in S. 985; and (2) to strengthen present federal agencies in this field as needed by means of providing such funds as are reasonably required to effectively enforce the laws for which such agencies are administratively responsible; and (3) upon careful review of all present applicable laws, to undertake such reasonable amendment thereof as may be needed to promote fair dealing, to require full and proper disclosure of contents or ingredients, and to prevent deception in the consumer interest.

---

**CANNERS LEAGUE OF CALIFORNIA,  
San Francisco, Calif., July 27, 1966.**

**HON. HARLEY O. STAGGERS,**  
*Chairman, House Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.*

**DEAR CONGRESSMAN STAGGERS:** It is our desire to place the views of the Canners League of California before you and members of your committee with respect to the proposed packaging and labeling legislation (S. 985 and H.R. 15440) now the subject of hearings by the Committee of which you are the Chairman.

Since the National Canners Association, on behalf of the canners nationwide, is testifying with respect to the specific points involved in these Bills, we hesitate to take the time of the Committee to appear and present our views in person. Because of the importance of this legislation to California canners, however, it is respectfully requested that this statement of our views be accepted in lieu of verbal testimony and made a part of the hearing record.

The Canners League of California is a trade association of fruit and vegetable canners. Its members, numbering 30 companies, represent between 75 and 80 per cent of the total annual production of canned fruits and vegetables in California. California canners, in turn, produce and market approximately one-third of all the canned foods annually produced in the United States. The members of the association have followed the hearings and legislative progress of packaging and labeling legislation from the time hearings were first started by Senator Hart. It has subscribed continuously to the views officially expressed by the National Canners Association on behalf of the nation-wide canning industry and has on numerous occasions made similar views known to California Senators and Congressmen.

In order to formalize its opposition, the League's Board of Directors at a meeting held on July 26, 1966 (and each of our member firms has one representative on our Board of Directors) unanimously adopted a resolution, copy of which

is attached, setting forth its views concerning its opposition to provisions of the two Bills mentioned above.

We believe the attached resolution speaks for itself, however, we would like to clarify and stress two main areas of opposition. First, any move to change the present labeling of canned foods as presently prescribed in the United States Food, Drug and Cosmetic Act and the regulation and standards of identity which have been promulgated thereunder, and secondly, the enactment of Section 5(c)5 of H.R. 15440 to permit regulation of the size and dimension of the glass and tin containers used by canners.

We respectfully urge that these Bills, as presently constituted, not be favorably reported to the House Floor by your committee.

Sincerely yours,

M. A. CLEVELAND,  
*Executive Vice President.*

**RESOLUTION OF BOARD OF DIRECTORS OF THE CANNERS LEAGUE OF CALIFORNIA,  
ADOPTED BY UNANIMOUS VOTE AT AN OFFICIAL MEETING HELD ON JULY 26,  
1966**

Whereas fair packaging and labeling has been and continues to be a dominant consideration in the production and marketing of the many consumer products of the California canning industry; and California canners have supported all major legislative efforts from the adoption of the first Federal Food and Drug Law to the present which assure the buying public of safe and nutritious food products, truthfully and informatively labeled; and

Whereas California canners are proud of their industry adopted voluntary labeling programs, their voluntary action in presenting products in container sizes in conformity with the simplified practice program of the U.S. Department of Commerce, and the labeling of their products in conformance with the recommendations of the National Conference of Weights and Measures; and

Whereas the California canning industry compliments the State Food and Drug agencies, Weights and Measures agencies and the national organizations of Food and Drug and Weights and Measures officials for their continuing efforts to obtain the highest degree of marketing information for consumers, and also fully supports the work of these public servants in the further development of uniform programs to aid consumers; and further asserts that the efforts of these various agencies should not be thwarted by the enactment of so-called fair packaging and labeling bills; and

Whereas the existing Federal Food, Drug and Cosmetic Act, administered and enforced on a consistent and equitable basis, affords adequate authority, and the proposal to confer vast administrative authority for the promulgation of sweeping regulations covering canned foods would both duplicate existing law and permit additional arbitrary control to regulate the size and shape of containers and format of all labeling beyond any demonstrated need so that the cost of compliance with additional burdensome regulations would result in higher food costs and limit the choice of consumers in finding real canned food values in the market place: Therefore be it

Resolved, That the Canners League of California opposes the enactment of the additional administrative label and container controls applicable to canned foods—proposed in S. 985 and H.R. 15440—as unnecessary, unwarranted and contrary to the best interests of consumers.

---

**AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA.**

*Chicago, Ill., July 28, 1966.*

HON. HARLEY STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is to inform you that our Union strongly supports H.R. 15440 which you introduced on June 2nd. We believe enactment of this bill is absolutely essential to protect consumers against unfair and deceptive packaging and labeling.

We sincerely hope that the Committee will approve this legislation quickly and the House of Representatives will pass it. It should have been approved by Congress long ago.

This legislation does not pose any difficulties for the honest manufacturers. It simply provides that they give the consumer true information about what is contained in the box. It also would allow the consumer to be able to make an intelligent choice between competing products. This, it appears to us, is absolutely necessary for the preservation of competition and the free enterprise system.

We are frankly surprised that so many firms object to this legislation. We cannot understand why they would oppose the protection of housewives against deception. Apparently, the Senate could not understand this point either since it approved the bill by an overwhelming 72-to-9 vote. Again, let us urge that the Committee and the House will speedily approve this legislation.

Best regards.

Sincerely yours,

PATRICK E. GORMAN,  
*Secretary-Treasurer.*

UNITED LABOR COUNCIL OF GREATER FALL RIVER, MASS.,  
July 19, 1966.

W. E. WILLIAMSON,  
*Clerk, Committee on Interstate and Foreign Commerce, House of Representatives,*  
*Washington, D.C.*

DEAR MR. WILLIAMSON: H.R. 15440, Truth-In-Packaging, on accurate net weight and content, is designed to protect the buying public.

Please record our Council in support of this much needed Legislation.

Yours truly,

EDWARD F. DOOLAN,  
*President.*  
JOSEPH LANEILL,  
*Secretary-Treasurer.*

COMMUNICATIONS WORKERS OF AMERICA,  
*Washington, D.C., September 7, 1966.*

HON. HARLEY O. STAGGERS,  
*House of Representatives,*  
*Washington, D.C.*

MY DEAR MR. CHAIRMAN: The 410,000 workers and their families represented by the Communications Workers of America respectfully urge you to work toward and vote for reporting the Truth-in-Packaging Bill (H.R. 15440) out of the House Interstate and Foreign Commerce Committee without any weakening amendments and with the weights and measures provision.

This legislation is desperately needed by millions of American consumers who, all too often, are being victimized by the marketing practices of the nation's manufacturers.

An early reporting of this bill by your committee will be enthusiastically welcomed by millions of grateful housewives.

Sincerely yours,

JOSEPH A. BEIERNE, *President.*

NATIONAL RETAIL MERCHANTS ASSOCIATION,  
*Washington, D.C., August 1, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, Rayburn*  
*House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: In light of the national attention being focused on the need for more consumer protection, the information contained in the attached article by Sylvia Porter (The Washington Sunday Star, July 31, 1966), may be of interest to you and to your colleagues.

The article points out how retailers and manufacturers in America are working diligently in an effective way to serve the American consumer by providing quality goods and merchandise at the most economical prices.

We think Miss Porter's article has great merit in that it is just one of many examples, which frequently go unnoticed, of the genuine efforts of retailers to service the consuming public.

For the benefit of your colleagues, perhaps you would consider the Porter article for insertion in the record.

Sincerely,

JOHN C. HAZEN,  
*Vice President-Government.*

[From the Sunday Star, July 31, 1966]

#### YOUR MONEY'S WORTH—MORE PROTECTION FOR CONSUMERS

(By Sylvia Porter)

The Government is pushing for an unprecedented amount of legislation to protect the consumer.

In state capitals, drives for consumer protection laws are at an all-time peak. In every city, town and hamlet, consumers are complaining on a mounting scale not only about packaging abuses and hidden interest costs, but also about shoddy goods, poor service, late deliveries and monumental disregard by manufacturers and retailers of the consumer's "little complaints."

The warning to the U.S. manufacturer and retailer to give the consumer his money's worth—or else—has never been clearer. As a result, manufacturers and retailers are now taking a hard look at their own policies and practices.

Item: To combat the consumer's confusion over how to wash, iron, clean—and how not to ruin—many of the new clothing fabrics, the textile industry is drawing up a system of permanent clothes labels giving simple, concise instructions on their care and handling. The new labels, to appear within a year, will mean huge consumer savings on mistakes and will relieve retailers of many costly exchanges.

#### COMPLAINTS INCREASING

Item: To answer the growing number of complaints about shoddy workmanship in new furniture, the National Retail Merchants Association has drawn up a set of quality standards for manufacturers and is working on packaging standards to reduce the volume of damaged furniture when delivered. Several major department stores also have recently imposed new furniture quality and packaging requirements on their suppliers.

Item: To satisfy the complaint that a size 14 in one style is equivalent to a size 12 in another, the NRMA has devised uniform size standards for children's and ladies' clothing.

Item: To help clear the lines of communication between manufacturer, store and consumer, the NRMA is urging the retail industry to improve training of sales people and to "take full responsibility" for customer satisfaction.

Item: Increasing numbers of department stores are setting up their own "bureaus of standards" to test merchandise performance and to boost their own quality requirements.

Item: More and more small appliance manufacturers are permitting stores to exchange defective appliances immediately for new ones, and thus are eliminating the long wait for replacement.

"There is strong evidence," declares William Burston, chief of the NRMA's merchandising division, "that stores are getting a lot less patient with defective merchandise."

#### PRESSURE NEEDED

The consumer protection "contest" surely will become more intense and the consumer hopefully will be the long-range winner. But we ourselves must basically be our own watchdogs if the flow of shoddy products to the marketplace is to be reversed. We must insist on more workable goods at the store counter and on effective servicing of those products. We must demand quick action when the products we buy don't work. We must be willing to take the time and patience to follow through on complaints.

Walter N. Rothschild, president of Abraham & Straus in Brooklyn, puts it this way: "The more customers insist on a high standard of performance in everything they buy, the more retailers will have to raise their own standards, and the more imperfect goods they will send back to their makers. Once poor quality becomes a painful item of extra expense, rather than a concealed form of extra profit, it will disappear."

The "contest" to protect consumers, in brief, won't be won until we, the consumers, enter it with the determination to win.

THE FIRST NATIONAL BANK,  
Dayton, Ohio, August 29, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR SIR: We are writing you in reference to the Hart Packaging Bill referred to as H.R. 15440 Packaging Bill which we understand has already passed the Senate and is now being considered by the House Committee on Interstate and Foreign Commerce of which you are Chairman.

As a member of The Dayton Advertising Club, I wish to register my objection to the language and scope of the bill as it now stands.

We do not deny that some manner of limitation is necessary in packaging, however, we feel that the bill as it now stands covers too large an area and gives the Federal government entirely too many opportunities for individual interpretation insofar as packaging is concerned.

We are sure that you will receive many opinions pro and con and want to go on record as being *against* the Hart Packaging Bill as it now stands.

Sincerely,

HARRY MOUER,  
*Director of Business Development.*

LONG ISLAND CAULIFLOWER DISTRIBUTORS, INC.,  
Riverhead, N.Y., August 8, 1966.

HON. OTIS G. PIKE,  
*Longworth House Office Building, Washington, D.C.*

DEAR CONGRESSMAN PIKE: I am writing to you to ask you to oppose the Packaging and Labeling Control Bills (S. 985 and H.R. 15440). Although the Bills are apparently necessary for control of marketing practices as concerns some food products, it appears to me the problem was not studied in its entirety. If it were I am sure Congress would consider an exemption of fresh fruits and vegetables from these Bills.

Flexibility, as well as innovation, is vital in the fresh fruit and vegetable packaging industry. The very nature of our highly perishable products and the fact that product size and shape is often dependent upon weather conditions, require a vast degree of flexibility.

Standardization features of these Bills could regiment all packagers and drastically force less consumer choice in the supermarket. In many cases this restriction of consumer choice would increase packaging costs and lead to higher retail prices.

Since all, or most all, fresh fruits and vegetables have sufficient visibility for easy identification and inspection of quality, label information as to the name of the commodity, etc., is meaningless. I am in agreement that nonethical and dishonest conduct in the marketplace should be eliminated. The most capable "eliminator" in history, however, has been proven to be the consumer. Housewives are very prompt to register their disapproval where it is really noticed—in the pocketbook of the packagers of fresh fruits and vegetables by their refusal to buy.

I urge the Committee to reject these Bills in their present form or to consider an exemption for fresh fruits and vegetables.

Sincerely yours,

A. DENHOLTZ

LONG ISLAND AGRICULTURAL MARKETING ASSOCIATION, INC.,  
Riverhead, N.Y., August 8, 1966.

HON. OTIS G. PIKE,  
*Longworth House Office Building, Washington, D.C.*

DEAR CONGRESSMAN: This Association is strongly opposed to the application of pending packaging and labeling legislation to fresh fruits and vegetables. It is our understanding that the House bill (H.R. 15440) retains provisions that had been eliminated from the companion bill (S. 985) which was passed by the Senate in June, and that fresh produce would be affected along with non-perishable grocery store items.

We question the wisdom of giving government agencies such complete power to regulate the sizes, shapes and dimensional proportions of packages, feeling the result would be to increase packaging costs and further inflate retail food prices.

However, when the door is opened for the application of such regulations to highly perishable products which necessarily vary in size and shape from season to season because of growing conditions, there can be no doubt or question. This would be plain stupidity.

Standardization of packages may be desirable with respect to some grocery products, and certainly labels should convey proper information to the purchaser.

However, fresh fruits and vegetables are so packaged that identification is unmistakable and inspection is simple. Detailed label information would serve little or no purpose.

We hope the Interstate and Foreign Commerce Committee will grant an exemption for fresh fruits and vegetables, and would appreciate your intervention in behalf of the Long Island fruit and vegetable industries.

Sincerely yours,

ARTHUR N. PENNY,  
*Executive Secretary.*

---

GROCERS BAKING CO.,  
*Grand Rapids, Mich., August 10, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D. C.*

DEAR SIR: During the past couple of weeks I have brought myself up to date on contents of the so-called "Truth in Packaging" Bill which is under consideration by your Committee.

It seems evident that there is little reason to pass this type of legislation and I would like particularly to comment on just a couple of gross injustices that lurk in the provisions of this Bill.

This Bill would actually transfer the law making powers for food products from Congress to the Department of Health, Education and Welfare. This Department is already over-extended and preoccupied with the crushing problems of Medicare, Social Security extension programs, education research, etc. Isn't it very doubtful that this Department would be capable of controlling or policing the sale of food products as would be required through the passage of this Bill?

Another part of the Bill would permit the Department of Health, Education and Welfare to demand that ingredients copy appearing on the labels of food produced would have to state the percentage of each ingredient contained in the product. For those of us in the baking industry such a list would be of staggering length for many of our multi-ingredient baked foods.

There are many other objectionable features of this Bill and it is my view that it would be disastrous if enacted into law. It would impede development of economies in consumer packaging, impose unnecessary limitations on the varieties and design of packages available to consumers, be very costly in its administration and operation, an unnecessary charge on the taxpayer, an unfair and unneeded imposition on the food manufacturer, and red tape duplication of existing laws which already protect the consumer.

In summary, this is the type of legislation which will have exactly the opposite effect from what its authors claim and leave the consumer as the ultimate victim rather than the beneficiary of the many and complex restrictions. Definitely this Bill is not in the public interest, despite the extravagant claims of its proponents under the appealing but false slogan of "Truth in Packaging".

Very truly yours,

L. S. PARSONS,  
*General Manager.*

---

THOMAS J. LIPTON, INC.,  
*Englewood Cliffs, N.J., July 14, 1966.*

HON. JOHN JARMAN,  
*House Office Building,  
Washington, D.C.*

MY DEAR CONGRESSMAN: On July 26 your Committee on Interstate and Foreign Commerce will hold hearings on H.R. 15440—the so-called "Fair Packaging and Labeling Bill." To assist you in questioning witnesses at the hearings and

weighing the pros and cons of the proposed legislation, I offer the following observations on behalf of Thomas J. Lipton, Inc.

We are opposed to the legislation for the simple reason that the laws presently on the books are adequate to offer the consumers the protection called for by the proponents of "truth-in-packaging" *if those laws are vigorously enforced* by the Food and Drug Administration and the Federal Trade Commission. There is nothing in the Senate Bill to guarantee improvement of administrative machinery, nor is there a provision for funding the staggering increases in administrative staffs that would be called for if certain parts of the proposed legislation are finally enacted by the Congress.

We recognize that pressures on legislators may at times be irresistible and that you may be confronted with such a condition respecting "truth-in-packaging" legislation. Assuming that is the case, we acknowledge that we could live with the provisions of Section 4 of the proposed legislation because it really does no more than restate existing law, but we respectfully submit that Section 5 should not be enacted. The provisions of Section 5 are so vague as to constitute what may clearly be an unconstitutional delegation of legislative power to an administrative agency (similar to the delegation attempted under the NRA). Further, enactment of Section 5 would constitute a "buck-passing" effort on the part of Congress, for if the Congress cannot spell out its intentions with greater precision, how can an administrative agency do it?

Throughout the history of the proposed "truth-in-packaging" legislation, there has been a complete failure to emphasize one important point. Grocery manufacturers make no profit on the first sale of a product to the consumer. Profit comes only from repeat purchases. Unless the consumer is well enough satisfied to make repeat purchases, the product cannot survive. This built-in self-policing factor is the strongest argument against this so-called "truth-in-packaging" Bill. As the independent Parents Magazine said in an extended article on the subject of "How To Be a Better-Informed Food Shopper" in the July 1966 issue:

"Occasionally she buys a new product that doesn't please her. When that happens she doesn't buy it again. (If enough consumers don't like a product it disappears from the grocer's shelves.)"

I hope that our viewpoint on the "Fair Packaging and Labeling Bill" may prove helpful to you in determining whether or not enactment of this legislation is truly called for.

Respectfully yours,

W. GARDNER BARKER, *President.*

NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE,  
*August 26, 1966.*

HON. HARLEY STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: When the Executive Committee of the National Association of State Departments of Agriculture recently met in Alaska it received reports from its Division of Weights and Measures and the 51st National Conference on Weights and Measures urging changes in the language of Section 12 of S. 985, the Fair Packaging and Labeling Act.

The National Association of State Departments of Agriculture endorses the resolution of the 51st National Conference on Weights and Measures relative to this legislation, which is as follows:

**"RESOLUTION FROM THE 21ST NATIONAL CONFERENCE ON WEIGHTS AND MEASURES**

*"Resolved.* That this 51st National Conference on Weights and Measures, duly assembled in Denver, Colorado, this 15th day of July 1966, hereby endorses legislation on fair packaging and labeling to attain the goals parallel with this Conference; and be it further

*"Resolved,* That this Conference endorses enactment by the Congress of S. 985 as passed by the Senate, but recommends, in order to facilitate the accomplishment of the bill's objectives, certain technical language changes, as follows:

"1. Section 12, pertaining to the bill's effect on State law, should be clarified to reflect the view of the Senate Committee on Commerce, as published



in the Report of the Committee, that 'the bill is not intended to limit the authority of the States to establish such packaging and labeling standards as they deem necessary in response to State and local needs.' Specifically, the Conference recommends the substitution of the words 'are inconsistent or in conflict with' for 'differ from' in said Section 12. This would make absolutely clear that State consumer-oriented weights and measures laws are not nullified, whether differing or not from Federal laws or regulations, if these are necessary for the protection of the citizens of the State and do not conflict with Federal laws or regulations so as unreasonably to affect the flow of products in interstate commerce."

If you wish further information please contact me.

Sincerely,

L. H. BULL, *Secretary.*

---

SOUTHERN NEW ENGLAND DISTRICT,  
INTERNATIONAL LADIES GARMENT WORKERS UNION, LOCAL 178,  
Fall River, Mass., July 19, 1966.

W. E. WILLIAMSON,  
Clerk, Committee on Interstate and Foreign Commerce, House of Representatives,  
Washington, D.C.

DEAR MR. WILLIAMSON: Please make a part of the record our complete support for H.R. 15440 as a Bill that will go a long way toward prohibiting deceptive packaging before public purchase.

Yours truly,

RALPH A. ROBERTS,  
Manager, Local 178.

---

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 351,  
Pottsville, Pa., July 26, 1966.

We are submitting this statement to the Committee on Interstate and Foreign Commerce of the House of Representatives urging their support of H.R. 15440, and request that this statement be made part of the records of the hearings.

The deception concerning the fair packaging and labeling on consumer goods is unfair to the consumer.

The consumer should be protected from the subtlety of labeling and packaging.

The package should be regulated as to the size not in excess of the contents. The weight should be uniform in ounces—for easier comparison of prices.

The package also should not have any misleading statements written, in bold letters across the package, where the consumer will think he is getting a little more for his money or at a saving.

All pertinent information should be listed uniformly on the bottom of the package in legible print. The label should also have the ingredients listed on the package as well as the name and place of business.

Very truly yours,

MARTIN A. ROSATO, *Manager.*

---

EASTON DISTRICT COUNCIL,  
INTERNATIONAL LADIES' GARMENT WORKERS' UNION LOCALS 234 & 243,  
Easton, Pa., July 14, 1966.

HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce:

The following resolution was adopted on July 14, 1966 by the Executive Board of the Easton District Council with reference to H.R. 15440:

"Whereas: H.R. 15440 directs the secretary of Health-Welfare-Education, and the Federal Trade Commission to promulgate regulation to insure that the labels of packages of consumer commodities adequately inform consumers of the quantity and composition of the contents, and facilities price comparisons.

"And whereas: H.R. 15440 provides authority for the secretary of Health-Education-Welfare, and the Federal Trade Commission to promulgate regulations on a commodity line basis when necessary—

"And whereas: H.R. 15440 provides for the establishment of weights and quantities standards to facilitate price per unit comparisons.

"And whereas: H.R. 15440 provides for due process procedures in the promulgation of regulations.

"Let it then be resolved that the members of the Easton District Council urge the members of the Committee on Interstate and Commerce to act affirmatively on H.R. 15440."

GRACE BIRKEL,  
District Manager.

FEDERATION OF HOMEMAKERS.  
Arlington, Va., August 2, 1966.

Re S 985 and related legislation.

HON. HARLEY O. STAGGERS,  
Chairman, House Interstate and Foreign Commerce Committee, Rayburn Building, Washington, D.C.

DEAR MR. CHAIRMAN: Here in Huntsville, Ala., where I had hoped to get away from consumer problems for a week and enjoy being just a doting grandmother I am informed through a Drew Pearson article in the Huntsville Times of recent date that the excellent Senate passed Truth in Packaging legislation is in trouble—due to efforts of lobbyists and even members of your Committee! No doubt most of the public believed the legislation was safely launched—after Senate action. Our grass-roots membership has learned the hard way that even after a bill to protect consumers has passed Congress—it is necessary to check to see if funds have been allocated for its enforcement and regulations established—also for its enforcement. This is a true hardship on bonafide consumer organizations—who have home responsibilities to be carried on by the membership—usually giving their time to the organizations! This is the situation with our group.

However I do believe the public—as a whole—is becoming more sophisticated about the difficulties of getting legislation to benefit consumers considered and passed and then enforced. The publication of "Silent Spring"—followed by the tragic Thalidomide-deformed babies—then the White House Report on Effects of Pesticides—the press coverage of the various drug hearings—damage to humans from poorly tested drugs, etc. has been educational.

What is acutely needed is more groups of consumers or organizations—such as Church groups, PTAs, etc. taking interest in the problems of our regulatory agencies—the responsibilities and duties of these Agencies, etc.

Also the intelligent, responsible viewers who have been driven away from television because of the programs offered must awaken to the impact of the present advertising upon the viewers who can stand the frequent commercials. It would appear that the children, adolescents and poorly educated are being educated to accept—demand—foods of poor quality, extravagant packaging. The concern of Mothers that their families eat balanced meals is being quieted by the questionable advice to depend on one ounce of a certain cereal at breakfast—rather than wholesome meals. There is also a plea for letting a child prepare the family breakfast—an Instant Breakfast! Appeal to save time—for what? To take tranquilizers? Viewers get the suggestion to take aspirin when the heat gets intense—for upset stomachs—alka seltzer on the rocks, ad nauseum.

A professor of education at American University about seven years ago stated there should be courses to teach people to resist sales approaches!

The processors who use T-V and radio to control the eating habits (purchasing habits) of a large segment of our population seem also to assist in teaching the nutrition or home economics courses of our schools.

Therefore, it becomes increasingly difficult for the consumer who wishes quality of product rather than fancy—even misleading—packaging to find the products desired. Cultivated mass demand seems to control our available grocery shelf products.

It will be an aim of our membership to educate their friends and acquaintances to the economic facts of life in the U.S. Informed consumers must rally to the support of this Nation's Regulatory Agencies—must inform members of Congress of the legislation desperately needed to protect the pocketbooks and health of the public—and check that present legislation is adequately enforced.

We, the officers of this Federation, anticipate that through your leadership a strong packaging bill will be reported out of your Committee—despite efforts to

sabotage it. As we steadily increase in membership—we shall participate more actively in the consumer problems confronting the Congress and the Regulatory Agencies.

Respectfully,

RUTH G. DESMOND  
Mrs. Gordon B. Desmond,  
*President.*

WILL'S INC.,

*Bismarck, N. Dak., August 17, 1966.*

Re S. 985, H.R. 15440, labeling and packaging.

HON. HARLEY O. STAGGERS,

*Chairman, House Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.*

DEAR CHAIRMAN STAGGER: I operate a small business allied with the confectionery industry. As none of my state's delegation sits on the committee, I am writing you direct.

First, I am in opposition to this legislation; I believe there is already sufficient machinery to do this job. Secondly, the standardization authority could work extreme hardships to small processors and packagers such as ourselves. We compete with industry giants having large cash reserves capable of making machine changes and prosecuting sales programs for consumer acceptance of new sizes and weights in their products; we have no such resources.

The Murphy amendment offers some relief to the confectionery industry, but does not mention products like ours, sold through confectionery channels in competition with their products, but not so classified.

Our products sell in consumer-accepted pre-priced 5¢, 25¢, and 49¢ sizes; raw sunflower seed varies widely in price. Only by weight changes can we keep the packages in these standard price groups. Standardization is bound to require many changes; changes must be paid for, and it will be the consumer who pays for the "protection" through higher prices, in a period when inflation is already a serious problem. Thank you for listening to my views.

Sincerely,

GEORGE F. WILL, Jr.,  
*President.*

DAYTON, OHIO, August 23, 1966.

HON. HARLEY O. STAGGERS,  
*House of Representatives,*  
*Washington, D.C.*

DEAR CHAIRMAN STAGGERS: Attached is a copy of a letter of August 18 from the Dayton Advertising Club (see attachment A) condemning the Hart Packaging Bill.

I want you and your Committee to know that, as a member and past President of the Dayton Ad Club—and chairman of the Advertising Federation of America (AFA) for two terms—I disagree with both the Dayton Ad Club and the Advertising Federation on this matter. Many of the top people in Advertising agree with me, as does Mr. Emerson Foote, Chairman of President Johnson's Council On Smoking and Health, and a leading advertising man of the U.S.

For 20 years I was Advertising Manager of National Cash Register Co. I am now in the Advertising business for myself. After over 35 years in Advertising I am quite familiar with the subject.

There is serious need for the Hart Bill. There is much blatant and flagrant dishonesty and deception in packaging, designed to confuse and fool the mass public. It is the duty of the Federal Government to protect the public—as well as honest packagers—by setting up standards that will prevent deception and give shoppers a simple basis for comparison so they can have true "Freedom to Choose."

The Advertising Federation of America over 50 years ago started a "Crusade For Truth in Advertising". They set up local Vigilante Committees to police local advertising, knowing that dishonest advertising would in time destroy public confidence in all advertising. They also knew that by protecting the public they were also protecting honest advertisers.

These local Vigilante Committees became the Better Business Bureaus.

Then, seeing there also had to be strong support of TRUTH IN ADVERTISING on the national level, AFA asked Pres. Woodrow Wilson to set up a federal agency to police advertising nationally. Pres. Wilson attended an AFA convention, was convinced, and recommended to Congress the creation of the Federal Trade Commission.

So, in promoting "Truth in Advertising" AFA was the father of both the Better Business Bureaus and the Federal Trade Commission. It is therefore sad to see AFA and its clubs now serving selfish interests by opposing the Government's efforts to promote TRUTH and protect the public.

Most members of AFA are not familiar with the provisions of the Hart Bill. They simply follow the urgings of others who think that, by opposing everything the Government does to keep advertising honest, they will win favor, and financial support, from certain big companies.

The above are but some of the reasons why I am strongly for the Hart Bill. I see the need for it. It will help all advertising by doing much to keep it honest . . . while at the same time protecting the public.

You may use this letter in any way you see fit. I hope you will read it to your Committee.

Sincerely,

G. W. HEAD.

#### ATTACHMENT A

DEAR AD CLUB MEMBER: As you may know, there is a bill before the Congress at this time which has an important relationship, either directly or indirectly, to each person in advertising.

The Hart Packaging Bill (referred to as HR 15440 Packaging Bill) has now passed the Senate and is being considered by the House Committee on Interstate and Foreign Commerce. Chairman of the Committee is Harley O. Staggers (Democrat from West Virginia). Two Ohio congressmen, Gilligan (Democrat) and Devine (Republican) are serving on the committee.

We on the DAC executive committee trust that those members who object to the language and scope of this bill will act in their own behalf by writing Representatives Rodney Love, Staggers, Gilligan, Devine and others of your choosing.

The position of most advertising people was aptly described in a recent letter from the AFA to Chairman Staggers which said in part:

"There is a very real danger felt by the membership of our organization that creative advertising and promotion will be sorely inhibited, to the detriment of our economy and of consumer choice, by the proposed legislation.

"We urge this committee to keep in mind they are deliberating about the economic futures of nearly 10,000 packaged grocery store products, drug, cosmetic, personal products and numerous other items that are bought by consumers at a staggering retail value of about \$65-billion a year. This great portion of our economy would be brought under rigid control by the proposed legislation. This legislation has not received the careful analysis, research, review and debate worthy of its possible damaging impact on the total economy and the U.S. consumers' freedom to choose."

Pencils ready? Go!

Sincerely,

WILLIAM M. McBRIDE,  
President, Dayton Ad Club.

PROVIDENCE, R.I., August 16, 1966.

HON. JOHN O. PASTORE,  
Providence, R. I.

DEAR SENATOR: I am a practicing Pediatric Allergist in the city of Providence, and recently came across a problem, which is related quite pointedly to a bill now before a congressional committee regarding "Truth in Packaging."

A certain asthmatic boy in my practice began to have increasing cough and wheezing at night after several years of successful management. The mother also noted his brothers, (in the same bedroom) were being similarly affected with coughing at night also.

The parents dutifully informed me that they had, indeed, purchased new pillows for the boy's, but they were sure they were no problem because they were labeled "Non-Allergenic."

When I finally learned what was actually in the pillows, everything came into focus. The pillow was filled with Kapok.

Kapok, far from being non-allergenic, is one of the most allergenic substances known, and we keep a sample in our Allergy Clinic to show how, with aging, it crumbles to a fine, irritating dust.

This type of mislabeling shouts for more strict and punishable laws regarding honest labels. A law is now pending before Congress, the Hart Bill, recently cleared, I believe, by the Commerce Committee of the Senate. Your active support for this bill in behalf of the consumer is respectfully requested.

Sincerely,

GEORGE K. BOYD, M.D.

WESTERN SPRINGS, ILL., July 6, 1966.

HON. HARLEY O. STAGGERS,  
*House of Representatives,*  
*Washington, D.C.*

DEAR SIR: I am writing to you to register my objection to the passage of H.R. 15440, the "Fair Packaging and Labeling" bill.

Practically every section of H.R. 15440 duplicates existing provisions for controlling dishonest labeling and packaging in the food industry which is now regulated by two agencies—The Food, Drug and Cosmetic Act and Federal Trade Commission.

I do not believe it necessary to add another Federal Bureau, with the substantial dollar appropriations which will be necessary to support it, to our existing agencies for the purpose of controlling isolated instances of deceptive labeling and packaging. Our two present agencies have the power to adequately control such practices.

I believe that the average housewife, who does most of the buying, is intelligent enough to put any manufacturer out of business if that manufacturer tries to trick her into purchasing his product by dishonest labeling or packaging.

The provisions of this bill can only result in higher manufacturing costs which will be passed on to the consumer.

I am sending copies of this to the other members of your Committee on Interstate and Foreign Commerce, from the State of Illinois.

Very truly yours,

WENDELL W. WADE.

EVANSTON, ILL., July 22, 1966.

CONGRESSMAN HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee, House Office Building,*  
*Washington, D.C.*

DEAR SIR: This letter, in relation to the so-called "Truth in Packaging" bill now before you, is prompted by a request sent to me by the American Association of Retired Persons. This request asked for copies of your letters sent to Congressmen on "behalf of Truth in Packaging that will be extremely valuable in our efforts to inform the House Members that deceptive packaging and labeling is a matter of special concern to the 19 million people over age 65."

I know that this organization has been very active in behalf of the bill sponsored by Senator Hart in the Senate, and that it has now transferred its activities to your Committee and the House of Representatives. It, like so many other well-meaning organizations, arrogates onto itself the role of spokesman for "19 million people over age 65." On arguments, this particular request contains the following:

"The producer would be required to label a detergent package as '53 ounces' rather than '3 lbs. 5 oz.' The consumer could then more easily divide '53' into the selling price to reach a unit cost to compare with that of another brand."

For many years, the Food and Drug Administration refused the manufacturers the right to label food packages weighing more than 1 lb. in ozs. Its argument was that, for example, 53 ozs. sounds like a bigger package than 3 lbs. 5 ozs. The proposed bill puts a great deal of power into the hands of the Food and Drug Administration and I know from experience in the case just cited, that the Food and Drug Administration does not approve of the specific method of expressing weights as suggested above.

There are laws already in existence prohibiting deceptive packaging—the packages must be reasonably full. There are even regulations in existence

detailing the size and type that should be used in declaring net weights. But, as you well know, no legislation can eliminate dishonest or deceptive advertising completely. The Food and Drug Administration has, in my judgment, enough power to take grossly misrepresented packages of foods, at least, off the market.

Referring to the quotation above, if a housewife is sufficiently intelligent to divide the price of the package of detergent by 53, in order to learn the price per ounce, I am sure she is intelligent enough to be able to convert 1 lb. 5 ozs. into 53, or detect other gross deceptions in packaging or labeling.

Much of the propaganda for bills of this type is conducted by persons totally unfamiliar with problems faced by manufacturers. Suggestions have been made that certain types of commodities be packaged only in packages of fixed sizes. For example, corn meal should be packaged only in 1 lb., 2 lb., or 5 lb. packages. Packaging machinery is extremely costly and modern high-speed units can cost from \$35,000 to \$150,000. Consider a manufacturer making puffed wheat, pancake flour and corn meal. He might very easily package all three of these products on the same machine but the weight of the corn meal might be 3 lbs.; that of the pancake flour 1½ lbs. to 2 lbs.; whereas the puffed wheat might be 5 oz. or less. It is not practical to pack similar products as puffed wheat and puffed rice in the same size package unless the rice packages contain 15% or 20% greater weight than the puffed wheat. It would seem perfectly logical to the uninformed to require, for example, that all puffed wheat and puffed rice be packaged in 6 oz. packages. If this were the law, then the wheat packages and rice packages would be different sizes, requiring separate packaging lines, thus adding greatly to the expense of packaging. Much of this type of information will undoubtedly be brought before your Committee. But, unfortunately, this factual information seems to be overlooked by some misled by the appealing slogan—"Truth in Packaging."

I trust your Committee will see fit to reject or, at least, drastically modify the proposed bill.

Yours truly,

F. N. PETERS.

FAIRFIELD, CONN., August 31, 1966.

HON. DONALD J. IRWIN,  
Congress of the United States,  
Longworth Building, Washington, D.C.

DEAR MR. IRWIN: Thank you for having your office call me this morning to the effect that the House Committee on Interstate and Foreign Commerce has closed all public appearances before its Committee. My telegram to you stated that I was anxious to appear before this Committee hearing H.R. 15440. In view of the fact that no more appearances are permitted, there certainly is no percentage in my traveling to Washington to make a personal appearance.

Relative to H.R. 15440—I must first state that I have no connection or interest in the packaging industry or any of its related fields. I am speaking only as an individual, and perhaps I should say, as a representative of my family. Also, I hope I represent many of my friends who have spoken to me on this matter. In very simple language, I believe that there are already sufficient regulations covering fair packaging and labeling. These should suffice without adding to the complexities of this subject.

My real objection however, is to the fact that somehow or other Congress believes they can regulate what people really want. This is just not true, and I must give the American housewife sufficient credit and sufficient intelligence so that they and they alone will have the free choice to buy what they want, in the containers that they want, in the styles that they want and in the content that they want.

It is all well and good to set up voluntary controls, but it just won't work that way. Some busy body in some department is going to establish regulations either now or later that will take all of the fun out of shopping. You will go into a store and find cereal in the same size containers, and the same color. I have never been to Russia, but I have a feeling that this is what they have over there.

This whole business is just a lot of nonsense, and let's give the general public credit for knowing something.

Sincerely,

FRED B. SILLIMAN.

BUNKER HILL ORCHARD,  
Gerrardstown, W. Va., July 22, 1966.

HON. HARLEY O. STAGGERS,  
House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: The following statement, relative to H.R. 15440, is prepared as testimony in lieu of seeking verbal testimony at your busy committee hearings on this bill.

Because of the complexities, and the rapid changes in size and quality of the apple crop each year, we believe that the application of Packaging Controls in this industry is most undesirable and, in fact, unworkable.

The prepackaging method of marketing apples has indeed "saved" the industry after the serious decrease in the export market during World War II. Actually it is still in an experimental stage and it is mandatory that industry research and imagination be continued to ascertain the proper size and shape of the container. There is no deception possible since the industry is very much aware of the positive fact that the consumer is attracted to the full view of the historically attractive apple.

All packaging machinery is designed for this type of packaging and possible changes would necessitate additional expenditure to an already burdened industry which faces rising costs in every direction.

Profits in this industry are controlled by the usual business factors in addition to the weather, the increasing shortage of farm labor, and the unusual strong influence of supply and demand which varies so tremendously from year to year.

Your indulgence in deleting apples from this Packaging Bill is most desirable by an industry that cannot practice deception because of the "sight buying" of the consumer. We must be permitted to ascertain the container most desired by the consumer, restrict our further capital expenditure develop more imaginative and attractive containers, and retain our protective guidelines established and maintained by the U.S. Department of Agriculture.

Sincerely yours,

JAMES F. LAISE, Partner.

FERNSWORTH NEWS SERVICE,  
Washington, D.C., July 30, 1966.

CHAIRMAN, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
House of Representatives.

DEAR SIR: I submit to you herewith memoranda (attachment A) on the deceptive labeling of a supposed oyster stew put out by Van Camp Sea Food Co., a subsidiary of Ralston Purina company of St. Louis as supporting evidence for the Senate-passed and other fair labeling and packing bills now before your committee.

Your very truly,

LAWRENCE FERNSWORTH.

WASHINGTON, D.C., July 18, 1966.

(Attention Wade H. Nichols, editor)

GOOD HOUSEKEEPING,  
(Attention Wade H. Nichols, editor)  
New York:

I enclose a memo on supposed "oyster stew" called "Chicken of the Sea," distributed by Van Camp Sea Food Company and bearing your guarantee.

I submit you are contributing to this fraud on the consumer if, after due notice, you allow your guarantee to remain on the product. The consumer has the right to assume that your seal is a guarantee of quality, even though it goes no further than to guarantee refund or replacement. In my book that's tricky kind of guarantee.

Yours very truly,

LAWRENCE FERNSWORTH.

I am wondering whether the Federal Trade Commission ought not to give some attention to the validity of your guarantee.

**LABEL OF THE PRODUCT: "CHICKEN OF THE SEA"—EXTRA DELICIOUS OYSTER STEW**  
**NET. CONTS. 10½ Oz. Av.**

Van Camp Sea Food Company, distributor

Port of Long Beach, Calif. TM Balston Purina. Fine Foods from Checkerboard Square

**Seal**—Goodhousekeeping guarantees if product or performance defective replacement or refund to consumer.

**Ingredients** fresh whole milk, selected sliced *oysters*, water, pure butter, salt, monosodium glutamate, disodium phosphate, sodium bicarbonate, spices.

(On reverse label face:)

(Chicken of the Sea contains *choice tender oysters*—cultivated in waters especially suited to the development of prime oysters.

**Tasty seafood menu.** (Follows three menus each starting with "oyster stew".) Easy to serve: Just heat and season to taste (do not boil) add more milk or cream if desired.

#### COMMENT

I consider this a fraud on the consumer. The supposed "selected sliced oysters" which the consumer is led to believe are contained in the "stew" do not exist.

There are fragments of oysters and one discernable "slice"—altogether not more than one oyster and perhaps not even the fragments of one whole oyster.

The oyster is of the coarse type dispensed in Seattle and grown along that part, and perhaps other parts, of the Pacific Coast. They are a pulpy oyster with an excess of blackish substance inside, by comparison with the oysters of the Atlantic coast or gulf coast or overseas oysters and altogether lack their delicate flavor. Their main recommendation is that they are bulky and exceedingly coarse and hardly appealing to a connoisseur in oysters. The two times I tried them on the West Coast my stomach protested.

In other words they are not chicken of the sea, or choice tender oysters.

But regardless of the low quality types of oyster it seems to me fraudulent to lead the consumer to believe that he is getting "choice tender *oysters*" when he is not getting *oysters* and perhaps not even one fragmented oyster.

MAPLEWOOD, N.J., July 27, 1966.

HON. PAUL J. KREBS,  
 Cannon House Office Building,  
 Washington, D.C.

DEAR MR. KREBS: Thank you for forwarding a copy of the letter from W. E. Williamson, Clerk of the House Committee on Interstate and Foreign Commerce regarding the so-called "truth in packaging" bill. His kind advice that a statement might be submitted for the consideration of the Committee Members is appreciated.

A friend of mine who will attend the hearings on S. 985 and H.R. 15440, has assured me that our views will be clearly and capably presented. It is important that the Committee understands that packaging involves heavy investment for machines and materials. Changes, compelled by law, could only be made at great expense at a time when further inflation would be harmful to our economy.

"Standardization of weights" sounds appealing but would be a cumbersome straight jacket. At present one carton can be used for several products, thereby simplifying making the containers, and the machines which fill the carton thus resulting in economy. If uniform weights were demanded by law, the consumer would have to pay for the additional containers and packaging equipment. The existing law is adequate so the customer may easily determine the contents of the container. Most Americans have enough education and intelligence to shop in today's stores and take home the real bargains on display.

A visit to any supermarket will immediately reveal to the Committee, or anyone concerned, the highly competitive condition that exists in the food industry. If our good friend, the housewife, has any particular preference as to shape or size of package or quantity of merchandise sold as a unit, some enterprising businessman will satisfy that preference as long as she buys his product.



I am most grateful to you and the Committee for the opportunity of submitting these views. A copy of this letter is enclosed for the Committee.

Sincerely,

ROBERT S. TAGGART.

LITHONIA, GA., July 13, 1966.

Truth-in-packaging, consumer protection bill.

HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Rayburn Office Building,  
Washington, D.C.

DEAR SIR: With reference to the measure now being considered to enforce truthful statement of weight, etc., on the outside of packages, I should like to draw your attention to one device employed by manufacturers that makes it difficult for consumers to compare values. This is the practice of mixing bulk and weight measurement. In comparing the prices of different cooking oils, how is one to tell the meaning of "1 pint 6 oz." as against, say, "1 quart"? For anyone who knows the specific gravity of oil and is prepared to spend several minutes on an arithmetical problem this may be just fine. However, for someone who has left physics many years behind true comparison becomes impossible.

I am sure you will agree that the practice is sailing pretty close to the ethical wind. May I suggest mandatory adherence either to one or the other? Because of specific gravity differences I would have thought that in the case of certain items, such as the oils referred to, measurements should be wholly in bulk terms, in quarts or pints and fractions thereof, e.g.,  $1\frac{1}{4}$  pints. Moreover, housewives are probably most at home with bulk terms in assessing liquids.

However, if you were to permit either none or the other, then confusion would be thrice confounded, with one supplier using bulk, the other weight, measurement. The only alternative to a mandatory single standard would be to compel both measurements to be stamped on the package—bulk and weight, e.g.,  $1\frac{1}{2}$  pints—1 lb. 4 oz.

I do hope you can consider this suggestion. I apologize for submitting it so late. Newspapers gave no publicity to your request for suggestions. I learned of your proceedings from a Research Institute Bulletin.

Yours truly,

E. N. EDWARDS.

#### REPLY TO JOHN A. HOWARD'S CRITIQUE OF TRUTH-IN-PACKAGING IN AN AMERICAN SUPERMARKET

(By Monroe Peter Friedman, associate professor of psychology, Eastern Michigan University)

When testimony is presented before a Congressional Committee on a matter of national significance by a member of the academic community who appears not as a private citizen but rather as an authority in a particular field of scholarly activity, the members of the Committee, and indeed the lay public at large, are usually left with little choice but to accept his scholarly pronouncements in much the same manner as a jury accepts the testimony of an expert witness. Thus it would seem that an individual testifying under these circumstances should make unusual efforts to assure that the same high standards of objectivity which are applied to his own scholarly research are employed in his analysis and evaluation of the issues before the Committee. Having read the record of the recent hearings of the House Committee on Interstate and Foreign Commerce on H.R. 15440, I feel compelled to question the objectivity of a representative of the academic community, particularly with regard to his testimony concerning the report of a study which I recently conducted, entitled "Truth-in-Packaging in an American Supermarket." I refer to John A. Howard, a Professor of Marketing at Columbia University, who testified in behalf of the Grocery Manufacturers of America.

Before commenting on Mr. Howard's critique of my study, I would like to make some general observations about his testimony. First, the minor role he assigns to price comparisons by shoppers in the American marketplace. Mr. Howard observes that price comparisons are usually made by the consumer at only one stage of the buying cycle, namely, the stage just before her buying behavior becomes restricted to one particular brand in a product category.

Since only this one brief stage in the cycle is characterized by price comparisons, Mr. Howard argues that they present no major problem to the consumer.

What Mr. Howard fails to point out is that this particular stage in the housewife's purchasing cycle is *the* critical one. It is the active decision-making stage in the process—the stage at which the housewife selects a particular brand to which she remains loyal. Thus, if a consumer should err critically in her price comparisons at this active stage of the cycle, the consequences of the error would be felt throughout the habitual remainder of the buying cycle.

The situation is somewhat analagous to married life. Although the time taken to select a mate is short when compared to the duration of the marriage (a period of loyalty to mate, rather than brand!), could anyone seriously argue that the "mate selection phase" is of minor importance?

After commenting on what he considers to be the minor problem presented by price comparisons, Mr. Howard goes on to ask if standardized packaging would increased the tendency of consumers to make price comparisons. In answer he cites evidence indicating that a housewife buys, and thus, he argues, presumably considers, very few brands in a product category. Even if one accepts the somewhat questionable argument that few brands purchased means few brands considered, a major problem in the interpretation of this finding remains. Indeed if it could be demonstrated unequivocally that the American housewife in her day-to-day shopping limits her purchasing decisions to no more than say, two brands per product category, we would still be in no position to argue that standardized packaging and labeling would not increase her tendency to make price comparisons. For just as Mr. Howard would use this hypothetical evidence to question the need for a packaging bill, could not the advocates of the bill argue, and argue persuasively, that the housewife may consider only a small number of brands in her purchasing decisions precisely because the confusing packages and labels of today's supermarket do not permit her to do otherwise?

In introducing his remarks on the packaging study, Mr. Howard refers to the study's findings as "some data developed by Monroe P. Friedman." The image which this conveys, at least to this writer, is one of someone casually throwing together some Sunday supplement survey results over the course of a rainy afternoon. I believe that this unfortunate use of language presents a highly misleading picture of the study. Mr. Howard may have reason to disagree with the results of the study or their interpretation but to refer to the findings of this empirical study with well-defined phases of experimental design, data collection, and data analysis as "some data developed by Monroe P. Friedman" is in effect to deny to the study the status of a scientific investigation.

It is of interest to note that at least some leading applied psychologists do not share this view of the study. The study was accepted for presentation at the 1965 Annual Convention of the American Psychological Association. In addition, it was favorably reviewed and accepted for publication by the editors of a leading scientific journal in the field of applied psychology.

Now as to particular criticisms. On page 3 of his critique, Mr. Howard accuses me of falling into a "logical trap." In particular he states:

"The author slips into the same logical trap as do the advocates of the bill. He accepts the premise that 'a state of consumer confusion exists in the United States with regard to the true contents and prices of many common retail products.'"

Setting aside for a moment the question of whether not the advocates of the bill have fallen into a "logical trap," let us turn to an examination of Mr. Howard's second statement concerning my acceptance of the premise that "a state of confusion exists in the United States with regard to the true contents and prices of many common retail products."

This second statement of Mr. Howard is simply not supported by the contents of the report. The statement he quotes is from the very first page of my report; it is listed in an introductory passage as one of the three basic assumptions underlying the packaging bill. Nowhere on this page nor any other page of this report is any statement made or implied about my acceptance or rejection of this position. To state that I have accepted this position is in effect to say that I have generalized the findings of the study to the United States as a whole. This is simply not the case.

Mr. Howard continues his critique with a list of six ways in which the task for the experimental participants might well lead to errors in package selection. We will examine them in turn.

First, he argues that many of the product tests required more comparison to be made than a housewife would probably make in her day-to-day shopping. The salient point he neglects to mention is that these young ladies were given three times as much time to make their selections than they would be expected to take in their day-to-day shopping. It also should be emphasized that while a large number of comparisons were asked of these young housewives, their judgments were restricted to a single dimension, namely price-per-unit of quantity. It may well be that an economy-minded housewife seeking a "best buy" in her day-to-day supermarket shopping makes as many comparisons, but along several relevant dimensions such as price, product quality, and convenience of usage.

As a second part of his first criticism, Howard argues that the study does not face up to what he considers "the central issue," which he states as follows: "Does the consumer make greater errors when she is confronted with a larger number of packages?"

I submit that this statement of Mr. Howard reveals a fundamental misunderstanding of what the packaging bill is all about. The advocates of the bill are pressing for an elimination of what they consider to be confusing packaging and labeling practices. Odd and fractional ounce packages, labels with small print, misleading language to specify quantity—these are the ailments of the marketplace which they are attempting to remedy through legislation.

But Mr. Howard submits that it is the number of package sizes which is the central issue. That this measure is irrelevant to the packaging confusion issue can be illustrated by an example. In particular, if it were found that Product A, sold in package sizes of, say, 2, 4, and 8 ounces, is characterized by lower confusion scores than Product B, which in turn is sold in package sizes of, say  $3\frac{1}{4}$  and 8 $\frac{1}{2}$  ounces, Mr. Howard would presumably look upon this result as supportive of the position that packaging practices are not related to consumer confusion. That another opposing interpretation of the result can be made (with perhaps greater justification) should be clear to the reader.

The second and third critical comments about the packaging study are concerned with what Mr. Howard considers the deleterious effects of social and time "pressures" exerted upon the young housewives. He points to "good evidence from psychology," indicating that people under time pressure tend toward "behavior fraught with errors." Under social pressure our thinking, according to Mr. Howard, becomes impaired.

It is certainly true that external pressures can indeed induce a state of tension in an individual which in turn can influence his performance of a given task. However, the psychological evidence reveals a complex relationship between the intensity of the tension state and quality of task performance. Specifically, performance is generally found to be poor under either very high or very low levels of tension; on the other hand, performance is best under moderate levels of tension.

Mr. Howard would have us believe that the housewives of the study were experiencing not a moderate level of tension, but rather a state of franticness which did not permit a clearheaded approach to the 20 test problems. This thesis would lead to a prediction of a large proportion of errors not only for the total set of 20 product tests, but also for each of the individual product tests. A cursory look at Table 1 of the report reveals that the first production is borne out (43% of the product tests resulted in error), but the second prediction is not. For two of the 20 test products (granulated sugar and solid shortening), not one of the 33 supposedly highly pressured housewives committed an error in package selection—a result which cannot be accounted for by Mr. Howard's picture of "stereotyped, unthinking behavior fraught with errors."

As a fourth criticism, Mr. Howard points out that the housewives were asked to buy in a manner which is different from the way they usually buy, namely, without consideration to product quality.

In response to this criticism let me first clarify a procedural matter. Each housewife was not instructed, as Mr. Howard states, to buy the selected package in a product class but rather she was asked to indicate her choice to the experimental assistant who accompanied her. Thus a deliberate attempt was made to reduce interference with the natural response tendencies of the participants.

Now, in response to the more basic point which Mr. Howard raises concerning the unnaturalness of the selection decision for the experimental participants, it should be said that a task which is different from the usual one which a house-

wife experiences may or may not be a more difficult one. For the present experimental task, college educated young women were given three times the usual time to explore one and only one dimension of a purchasing decision. Let the reader decide whether this decision is more or less difficult than the day-to-day shopping decision involving a consumer with less education, less time, but a larger number of dimensions to explore.

Howard's fifth criticism of the packaging study deals with the fact that some of the products tested were not typically found in the households of some of the study's participants. He neglects to mention that only 7% of the 688 selection decisions involved such relatively unfamiliar products. Since the difference in average confusion score for the familiar and unfamiliar product tests was close to zero, the 613 familiar and 47 unfamiliar product decisions were pooled for the purposes of analysis. It would seem that Mr. Howard is arguing that the employment of what is a standard pooling practice in data analysis constitutes reason to question the validity of the study.

Mr. Howard's sixth and last reason to question the validity of the study is that he feels the participants may have ignored the instructions of the experimenter, choosing instead the brand which they normally buy in their regular supermarket shopping. It would seem that Mr. Howard and I differ in our estimate of the ability of college educated women to follow rather simple directions. If there is a grain of truth to Mr. Howard's thesis, one would expect to find brand-influenced errors across the set of 20 product classes. We find instead that despite the several brands of granulated sugar and solid shortening on display in the supermarket that all of the 33 housewives were able to select the correct package, both with regard to size and brand.

Some of these 33 young ladies in their day-to-day shopping surely purchase brands other than the most economical one for these products, and yet they were apparently not influenced by this purchasing habit while participating in the study.

This ends my reply to Mr. Howard's critique. I have taken issue with his testimony concerning my study and have furnished evidence to support my case. Whether the evidence brought forth is convincing I leave for the reader to decide.

---

EXECUTIVE OFFICE OF THE PRESIDENT,  
PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS.  
Washington, D.C., September 16, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In my letter to you of September 9, 1966, I transmitted to you a list of organizations with their resolutions on the Fair Packaging and Labeling legislation. Since then, I have received copies of additional resolutions from the following organizations which I would appreciate very much your including the hearings on Fair Packaging and Labeling legislation:

Federation of Citizens Associations of the District of Columbia.  
General Federation of Women's Clubs.  
National Council of Negro Women.  
National Farmers Union.  
National Housewives League of America, Inc.  
Santa Clara Democratic Council.

I enclose also a list of local consumer groups which have written to me indicating their support of the Fair Packaging and Labeling legislation, arranged by States.

Sincerely,

Mrs. ESTHER PETERSON,  
Special Assistant to the President for Consumer Affairs.

RESOLUTION ON FAIR LABELING AND PACKAGING LEGISLATION OF THE FEDERATION  
OF CITIZENS ASSOCIATIONS OF THE DISTRICT OF COLUMBIA, PASSED ON APRIL 28,  
1966

Whereas there is now a bill proposed to regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce and

for other purposes, said bill being known as the Truth-in-Packaging bill, now, therefore, be it

Resolved by the Federation of Citizens Associations of the District of Columbia in regular meeting on April 28, 1966 that it does hereby endorse, in principle, the provisions of this bill, and that copies of this resolution be sent to the Senate Committee on Commerce, the President of the United States and his Special Assistant on Consumer Problems, and to Senate Philip Hart of Michigan.

---

**RESOLUTIONS ON MISREPRESENTATION IN ADVERTISING AND MARKETING AND PROTECTION OF CONSUMER INTERESTS OF THE GENERAL FEDERATION OF WOMEN'S CLUBS**

Whereas, From time to time efforts have been made to weaken requirements of the Food, Drug and Cosmetic Act; therefore

Resolved, That the General Federation of Women's Clubs reaffirms its endorsement of the principles of the Food, Drug and Cosmetic Act and urges the strengthening of its provisions for consumer protection.

**48. Gasoline Tax (Convention 1961)**

Whereas, The average combined state-federal tax on gasoline now amounts to a sales tax of approximately fifty per cent, the highest rate on an everyday item in the entire economy; and

Whereas, When Congress increased the federal gasoline tax in 1959 it was understood that this would be a temporary measure and that the added one cent of tax would expire on June 30, 1961, to be replaced by specified portions of the federal highway user taxes not now being applied to the national highway program; and

Whereas, The national highway program, the costliest public works undertaking in human history, is being financed entirely at the federal level by taxes on highway users, and nearly 80 per cent of the program's support now comes from the federal tax on gasoline; and

Whereas, Federal taxes imposed on gasoline and on motor vehicle ownership and use now cost approximately \$4.3 billion a year, but only about \$2.6 billion of this revenue is being applied to the support of the federal share of the national highway program; therefore

Resolved, That the General Federation of Women's Clubs hereby calls upon the entire delegation of Senators and Representatives in the Congress of the United States to work actively for the expiration of the fourth cent of the federal gasoline tax on the promised date, for the use of the specified portion of the automobile and parts and accessories taxes for the highway program, as also promised, and for the rejection of any proposal for a further increase in the federal tax on gasoline; and

Resolved, That copies of this resolution be forwarded to all Senators and to all members of the House of Representatives.

**49. Misrepresentation in Advertising and Marketing (Convention 1962)**

Whereas, The General Federation of Women's Clubs has consistently worked for the protection of the consumer, and

Whereas, The General Federation of Women's Clubs opposes any misrepresentation in advertising, labelling, and all forms of marketing for public consumption; therefore

Resolved, That the Congress of the United States be petitioned to enact legislation needed to fully protect the consumer; and further

Resolved, That the General Federation of Women's Clubs urges its members to promote programs of education, action and cooperation with law enforcement officials to insure consumer safety.

**50. Protection of Consumer Interests (Convention 1951)**

Whereas, There is no committee of the United States House of Representatives or the Senate particularly charged with the safeguarding of the interests of the American consumer; therefore

Resolved, That the General Federation of Women's Clubs recommends that a permanent joint standing committee of the House and Senate be formed whose purpose shall be to inquire into all matters affecting the health, welfare, and protection of the consumer and to recommend appropriate legislation.

---

## RESOLUTION: NATIONAL COUNCIL OF NEGRO WOMEN

Whereas, we recognize the growing complexities of the marketplace make it increasingly difficult for consumers to buy wisely and that we recognize that the consumers need greater protection from fraudulent and deceptive practices: Be it resolved,

(1) that this convention empower the National President to name a National Consumer Interests Committee to study consumer problems and develop a national action program. This committee should maintain liaison with the President's Committee on Consumer Interests. It should give guidance to National Council of Negro Women regional and local consumer interests committees.

(2) it is recommended that each regional director and local president appoint a committee on consumer interests immediately to study state and local needs and to develop action programs at that level. These committees should liaison with the National Council's Consumer Interests Committee and the President's Committee on Consumer Interests.

(3) it is recommended that the National Council, through its national, regional, and local consumer interests committees, urge adequate consumer representation in the executive branch in each state government.

(4) it is recommended that the national, regional and local committees encourage school systems to require courses in consumer education and protection from primary grades through college.

(5) it is recommended that each local group see what can be done to get consumer education components into local Community Action Programs.

(6) the National Council of Negro Women endorses the principle of full disclosure in credit and urges the Congress to act in this area.

(7) the National Council of Negro Women endorses the principle of elimination of deceptive practices in packaging and urges the Congress to act in this area.

(8) the National Council of Negro Women feels its members have an individual responsibility to let their views on these matters be known to their senators and representatives.

---

RESOLUTION ON TRUTH-IN-PACKAGING BILL OF THE NATIONAL FARMERS UNION  
PASSED AT THE 1966 NATIONAL CONVENTION AS PART OF "1966 TARGET PROGRAM"

The Farmers Union, at our 1966 national convention, passed the following resolutions as a part of our "1966 Target Program" for 1966:

"Enact a 'truth-in-packaging' bill to stop deceptive labeling, packaging and pricing of consumer products and to establish ground rules on reasonable standards for weights and measures in packaged products."

The also stated:

"We urge strengthening of all enforcement agencies whose responsibility it is to protect competition, and intensification and extension of their efforts to protect farmers and consumers from price gouging, conspiracy and coercion."

We urge immediate passage of S. 985. We feel that this has already been watered down too much. If anything, we would like to see the bill strengthened by including packaged meats. This is top priority legislation among farm families in this country.

Sincerely,

TONY T. DECHANT,  
*President.*

---

RESOLUTION OF NATIONAL HOUSEWIVES OF AMERICA, INC. PASSED AT ITS 20TH  
ANNUAL CONVENTION, HELD IN WASHINGTON, D.C., JULY 18-21, 1966

REPORT ON LEGISLATION

The National Housewives League of America, Inc. in its 20th annual convention, held in Washington, D.C., July 18-21, 1966, went on record to support the Sen. Hart bill (S. 805), and to urge all the members of the 20 local leagues to

write their congressmen and representatives and ask that they vote for the passage of said bill.

ARENA J. BUGG,  
*National Chairman of Committee on Legislation.*

**RESOLUTION ON TRUTH-IN-PACKAGING OF THE SANTA CLARA DEMOCRATIC COUNCIL  
PASSED JUNE 13, 1966**

The Fair Labeling and Packaging Act, passed in the United States Senate, would provide supermarket and drugstore shoppers with more price-comparison information and would enable the Food and Drug Administration and the Federal Trade Commission to standardize quantity units and labeling.

The need for such legislation has been amply demonstrated.

Therefore be it resolved by the Santa Clara County Democratic Council that that House of Representatives be urged to pass this bill and the President of the United States to sign it;

And be it further resolved that copies of this resolution be sent to Congressmen Edwards and Gubser, President Johnson, the Speaker of the House, and the news media.

Submitted by Daniel N. Hoffman, Vice-President, S.C.C.D.C. June 13, 1966.

This resolution unanimously passed at the Regular Meeting of the Santa Clara Democratic Council June 13, 1966.

**CONSUMER GROUPS SUPPORTING FAIR PACKAGING AND LABELING LEGISLATION  
(BY STATES)**

**ARIZONA**

Homemaker Club, Mrs. G. F. Woods, 1431 Miracle Mile, Tucson, Arizona 85705.  
Pima County Stitch and Chatter Club, Mrs. E. Lovett, Member, 3632 N. Caballero, Tucson, Arizona.

**CALIFORNIA**

Association of California Consumers, Miss Jennifer Cross, 500 Sansome Street, San Francisco, California.  
U. C. Married Students Consumer Group, 1122 D San Pablo Avenue, Albany, California.  
Silver Spur Democratic Club, Mrs. Diane Kendy, Chairman, Issues Committee, 27122 Shorewood Road, Palos Verdes Peninsula, California 90274.  
American Association of Retired Persons, Mr. William Simader, President, Redlands Chapter No. 181, 1643 Orange Street, Redlands, California 92373.  
Santa Clara County Democratic Council, Mr. Daniel N. Hoffman, Vice President, SCCDC, 1241 Meridian Avenue, San Jose, California 95125.

**FLORIDA**

Chapter of the American Association of Retired Persons, Mrs. L. Bateson Finnigan, Chairman of Legislation, 821 14th Avenue, North, St. Petersburg, Florida.

**MICHIGAN**

Flint Area, Chapter, American Association of Retired Persons, Mr. J. E. Mayfield, 3201 Helber Street, Flint, Michigan 48504.

**MINNESOTA**

Ladies' Auxiliary to the International Association of Machinists, Mrs. Lillian Johnson, Recording Secretary, 6 Howard Gresen Road, Duluth, Minnesota 55811.

**MISSOURI**

Electrical Workers Auxiliary 453A, Miss Lavonni Cross, Secretary, 820 West Seminole, Springfield, Missouri.

## NEW JERSEY

Hudson City Senior Citizens Recreation Club, Mrs. Lillian Allan, Chairman,  
37 Leonard Street, Jersey City, New Jersey.  
Hudson City Senior Citizen's Recreation Club, Mrs. Florence Bald, Secretary,  
87 Paterson Street, Jersey City, New Jersey 17307.

## NEW MEXICO

Ladies' Society of the Brotherhood of Locomotive Firemen and Engineers.  
Mrs. May Agnes Thornburgh, Secretary Lodge #27, 932 Tieden Avenue, Las  
Vegas, New Mexico 801.  
Mobilization for Youth Consumer's Course, Mobilization for Youth, Inc., Mr.  
Arthur T. Ellis, 214 East Second Street, New York, New York 10009.  
The Woman's Club of Malba, Inc., Anne L. Shapiro, Correspondence Secretary,  
30 Center Drive, Malba, New York 11357.  
Bronx County Committee on Consumers, Mr. Louis Martini, Chairman, 1410  
Wood Road, Bronx, New York.

## OHIO

Mrs. Mary Johnson, Secretary URW Chapter #2, Goodyear, 2202 Watkins  
Avenue, Akron, Ohio 44305.

## OREGON

Carpenters Ladies Auxilliary, Mrs. Carolyn Olson, Recording Secretary, 4627  
N.E. 89th Street, Portland, Oregon.  
Ladies Auxilliary #715, Affiliated with UB of C&J of America, Mrs. Pearl Vande  
Lyster, Mrs. Ida Firgesen, 715 North Brandon Street, Portland, Oregon.

## PENNSYLVANIA

Woman's Auxilliary No. 216, Altoona Typographical Union No. 240, Mrs. Elizabeth  
Von Orman, Secretary-Treasurer, 308 Mason Street, Altoona, Pennsylvania  
16601.  
South Hills College Club, Mrs. Clude A. Stooddy, Chairman, World Affairs, Pitts-  
burgh, Pennsylvania.  
North Borough Woman's Club, Allegheny County, Mrs. John L. Phillips, 200  
Peony Avenue, Pittsburgh, Pennsylvania.  
Pittsburgh Young Adult Club of the National Association of Negro Business and  
Professional Women's Clubs, Inc., Mrs. Waunetra Hunt Davis.  
Home Makers Group, Mrs. Medea Miller, Secretary, R.D. No. 1, New Alexandria,  
Pennsylvania.  
Temple Daird Sisterhood, Mrs. Daird Belkin, Chairman, Social Action Com-  
mittee, 1223 Leslie Drive, Pitcairn, Pennsylvania 15140.

## TEXAS

Texas AFL-CIO, Mrs. Rosa Walker, W.A.D. Director, Box MM, Capital Station,  
308 W 11th, Austin, Texas.

## UTAH

Carpenter's Ladies Auxilliary, 165 West 1st North, Provo, Utah.

## WASHINGTON, D.C.

American Veterans Committee, Miss June A. Willeny, Administrative Director,  
1830 Jefferson Place, N.W., Washington, D.C., 20036.  
Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO,  
Mr. S. Frank Raftery, General President, 1925 K Street, N.W., Washington,  
D.C. 20006.  
Communications Workers of America, Helen Barthelot, Legislative Representa-  
tive, 1925 K Street, N.W., Washington 6, D.C.

## WISCONSIN

Auxiliary to Smith Steel Workers, Federal Labor Union. Local 19806 AFL-CIO,  
Mildred Martin, Secretary, 1470 West Locust Street, Milwaukee, Wis-  
consin 53206.



**Ladies' Society of the Brotherhood of Locomotive Firemen and Engineers,  
Mrs. Pearl Rather, Legislative Representative, 135 15th Street, Fond du Lac,  
Wisconsin.**

**American Association of Retired Persons, Mr. Jack Rasmussen, Mr. Harold  
Gade, Racine County Chapter, 1911 Fairview Terrace, Racine, Wisconsin 53403.  
AFGE Lodge 2144, Walter L. Raucher, Secretary, 5101 Mosley Drive, Greendale,  
Wisconsin 53129.**

**(Whereupon, at 12 :29 p.m. the committee was adjourned.)**





**In 8/4:89-46**

# **THREE VESTED GERMAN PAINTINGS**

---

---

**HEARING**  
**BEFORE THE**  
**SUBCOMMITTEE ON COMMERCE AND FINANCE**  
**OF THE**  
**COMMITTEE ON**  
**INTERSTATE AND FOREIGN COMMERCE**  
**HOUSE OF REPRESENTATIVES**  
**EIGHTY-NINTH CONGRESS**

**SECOND SESSION**

**ON**

**H.R. 12543**

**A BILL TO AMEND THE TRADING WITH THE ENEMY ACT TO  
PROVIDE FOR THE TRANSFER OF THREE PAINTINGS TO  
THE FEDERAL REPUBLIC OF GERMANY IN TRUST  
FOR THE WEIMAR MUSEUM**

---

**SEPTEMBER 19, 1966**

---

**Serial No. 89-46**

Printed for the use of the  
Committee on Interstate and Foreign Commerce



**U.S. GOVERNMENT PRINTING OFFICE**

**WASHINGTON : 1966**

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

**HARLEY O. STAGGERS**, *West Virginia, Chairman*

**WALTER ROGERS**, *Texas*  
**SAMUEL N. FRIEDEL**, *Maryland*  
**TORBERT H. MACDONALD**, *Massachusetts*  
**JOHN JARMAN**, *Oklahoma*  
**LEO W. O'BRIEN**, *New York*  
**JOHN E. MOSS**, *California*  
**JOHN D. DINGELL**, *Michigan*  
**PAUL G. ROGERS**, *Florida*  
**HORACE R. KORNEGAY**, *North Carolina*  
**LIONEL VAN DEERLIN**, *California*  
**J. J. PICKLE**, *Texas*  
**FRED B. ROONEY**, *Pennsylvania*  
**JOHN M. MURPHY**, *New York*  
**DAVID E. SATTERFIELD III**, *Virginia*  
**DANIEL J. RONAN**, *Illinois*  
**J. OLIVA HUOT**, *New Hampshire*  
**JAMES A. MACKAY**, *Georgia*  
**JOHN J. GILLIGAN**, *Ohio*  
**CHARLES P. FARNSLEY**, *Kentucky*  
**JOHN BELL WILLIAMS**, *Mississippi*  
**BROCK ADAMS**, *Washington*

**WILLIAM L. SPRINGER**, *Illinois*  
**J. ARTHUR YOUNGER**, *California*  
**SAMUEL L. DEVINE**, *Ohio*  
**ANCHER NELSEN**, *Minnesota*  
**HASTINGS KEITH**, *Massachusetts*  
**WILLARD S. CURTIN**, *Pennsylvania*  
**GLENN CUNNINGHAM**, *Nebraska*  
**JAMES T. BROYHILL**, *North Carolina*  
**JAMES HARVEY**, *Michigan*  
**ALBERT W. WATSON**, *South Carolina*  
**TIM LEE CARTER**, *Kentucky*

**W. E. WILLIAMSON**, *Clerk*

**KENNETH J. PAINTER**, *Assistant Clerk*

*Professional Staff*

**ANDREW STEVENSON**  
**KURT BORCHARDT**

**JAMES M. MENGEL, Jr.**  
**WILLIAM J. DIXON**

---

## SUBCOMMITTEE ON COMMERCE AND FINANCE

**TORBERT H. MACDONALD**, *Massachusetts, Chairman*

**CHARLES P. FARNSLEY**, *Kentucky*  
**BROCK ADAMS**, *Washington*

**HASTINGS KEITH**, *Massachusetts*  
**WILLARD S. CURTIN**, *Pennsylvania*

## CONTENTS

---

	Page
Text of H. R. 12543.....	1
Report of—	
Budget, Bureau of the.....	2
Justice, Department of.....	2
State, Department of.....	1
Statement of—	
Maurer, Ely, Assistant Legal Adviser, Department of State.....	3
Mondello, Anthony L., Chief, Office of Alien Property, Department of Justice.....	9
Shackleton, Robert G., Office of German Affairs, Department of State.....	3
Additional material submitted for the record by the Department of State:	
Drafts of notes of agreement between the Federal Republic of Germany and the United States re disposition of three vested paintings.....	22



## THREE VESTED GERMAN PAINTINGS

MONDAY, SEPTEMBER 19, 1966

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to call, in room 2123, Rayburn Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The committee will come to order.

The Subcommittee on Commerce and Finance is meeting today to hold hearings on H.R. 12543 filed by the chairman of the full committee, Congressman Staggers of West Virginia, to amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum.

(The bill, H.R. 12543, and department reports thereon, follow:)

[H.R. 12543, 89th Cong., 2d sess.]

A BILL To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 39 of the Trading With the Enemy Act, as amended (62 Stat. 1246; 50 U.S.C. App., sec. 39) is amended by adding at the end thereof the following subsection:

“(e) Notwithstanding any of the provisions of subsections (a) through (d) of this section, the Attorney General is hereby authorized to transfer the three paintings vested under Vesting Order Numbered 8107, dated January 28, 1947, to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany.”

DEPARTMENT OF STATE,  
*Washington, D.C., March 1, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. CHAIRMAN: I refer to your communication of February 10, 1966, requesting a report on H.R. 12543, a bill “To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum.”

This bill is identical to the legislation which the Department of State recommended be enacted in a letter dated January 31, 1966, from the Secretary of State to the Speaker of the House of Representatives. The views of the Department in support of this legislation are set forth in that letter.

Sincerely,

DOUGLAS MACARTHUR II,  
*Assistant Secretary for Congressional Relations.*

## THREE VESTED GERMAN PAINTINGS

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., April 11, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 12543, a bill "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum."

This bill was introduced at the request of the Department of State and would authorize the Attorney General to transfer certain paintings to the Federal Republic of Germany to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accordance with the terms of an agreement to be made between the United States and the Federal Republic of Germany.

The three paintings, which were vested under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) by Vesting Order No. 8107, dated January 28, 1947, are:

1. Rembrandt: Self Portrait.
2. Terborch: Portrait of a Man.
3. Tischbein: Portrait of a Young Woman.

These three paintings were stolen from the Weimar Museum on April 18, 1922 by two unidentified German soldiers. They were eventually sold in 1934 by a German merchant seaman to a Dayton, Ohio, businessman, who kept them in his home until July 1945, when they were taken to Siegfried R. Weng, Director, Dayton Art Institute, for appraisal.

Mr. Weng advised the Federal Bureau of Investigation of his suspicion that these paintings had been stolen from the German museum and, upon confirmation, Vesting Order No. 8107 was issued. It does not seem appropriate that this Department have a public sale of paintings known to have been stolen from the Weimar Museum. For this reason and because of the close relationship now existing between this country and the Federal Republic of Germany and, finally, since these paintings constitute part of the cultural heritage of the German people, their return in the manner proposed is deemed to be in the best interest of the foreign relations of the United States.

Pursuant to Section 5(b) of the Trading With the Enemy Act, all vested alien property, such as these three paintings, must be liquidated, sold "or otherwise dealt with in the interest of and for the benefit of the United States." However, it is the Department's view that the authority of the Attorney General to deal with vested property "in the interest of and for the benefit of the United States" is limited by Section 39 of the Act, as amended, which requires that the net proceeds remaining upon the completion of administration, liquidation, and disposition of vested property shall be covered into the Treasury for deposit in the War Claims Fund. Thus, even without the prohibition against return of vested property to Germany or a national thereof which is contained in Section 39(a) of the Act, it is necessary for legislation to be enacted authorizing the Attorney General to transfer these paintings to the Federal Republic of Germany in trust for the Weimar Museum.

Accordingly, the Department of Justice favors the enactment of H.R. 12543.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,  
*Deputy Attorney General.*

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., April 27, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your letter of February 10, 1966, requesting the views of the Bureau of the Budget regarding H.R. 12543, "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum."



The situation which has elicited this bill has been discussed at length in a letter the Secretary of State sent the Speaker of the House of Representatives on January 31, 1966, recommending legislation identical to this bill and also in the report which the Department of Justice is making on this bill.

For the reasons outlined in those letters, the Bureau of the Budget would favor enactment of H.R. 12543.

Sincerely yours,

WILFRED H. ROMMEL,

*Acting Assistant Director for Legislative Reference.*

MR. MACDONALD. The paintings are a "Self Portrait" by Rembrandt, a "Portrait of a Man" by Terborch, and a "Portrait of a Young Woman" by Tischbein.

The legislation before us is supported by the Department of State and the Attorney General of the United States, and I understand that witnesses from these Departments are present and will testify.

The first witness we will hear will be from the Department of State, Mr. Ely Maurer, Assistant Legal Adviser.

**STATEMENT OF ELY MAURER, ASSISTANT LEGAL ADVISER;  
ACCOMPANIED BY ROBERT G. SHACKLETON, OFFICE OF GERMAN  
AFFAIRS, DEPARTMENT OF STATE**

MR. MAURER. Mr. Chairman, members of the committee, I am pleased to be here on behalf of the Department of State to speak on H.R. 12543. I have with me Mr. Robert Shackleton, also of the Department of State, of the Office of German Affairs, who will be ready with me to answer any questions that the committee may have.

The Department of State and the Department of Justice support the passage of H.R. 12543, "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum." The purpose of this bill is to authorize the Attorney General on behalf of the United States to transfer certain paintings to the Federal Republic of Germany to be held in trust for eventual return to the Weimar Museum, Weimar, State of Thuringia, Germany, in accordance with the terms of an agreement which will be made between the United States and the Federal Republic of Germany if the legislation is enacted.

The three paintings consist of a "Self Portrait" by Rembrandt, the "Portrait of a Man" by Terborch, and the "Portrait of a Young Woman" by Tischbein, and are of substantial artistic and historical importance.

The paintings in question were stolen on April 18, 1922, from the Weimar Museum by two unidentified German soldiers. The paintings were brought by a German merchant seaman to this country in 1934 where they were acquired by a U.S. citizen who resided in Dayton, Ohio.

The Office of Alien Property, learning in 1946 of the presence of these paintings in the United States and their background, vested the paintings on the basis they were German owned.

The Department of Justice considers that it cannot return the paintings to Germany under existing legislation even though they were stolen, but is required to sell them. The Department of State is of the view that it would be prejudicial to our foreign relations for these paintings, which are part of the German cultural heritage, to be sold.

The paintings, as valuable works of art, should go back to the German people. Since these paintings cannot be returned under present U.S. legislation, it is necessary that return be authorized by the legislation in question.

Since the Weimar Museum is in East Germany, and is subject to a regime which the United States does not recognize as a legitimate government, the legislation provides for the return of the paintings to the Federal Republic of Germany to be held in trust for eventual return to the Weimar Museum.

This committee has received from the State Department draft copies of the proposed exchange of notes under which the Federal Republic of Germany would agree with the United States to hold the paintings in trust for such eventual return.

These notes would be exchanged between the two Governments as soon as the legislation was enacted. It is planned that prior to the return of these paintings to the Federal Republic of Germany there will be a public showing at the National Gallery of Art for the artistic and cultural benefit of the citizens of the United States.

The Department of State has been in communication with the representatives of the Federal Republic of Germany. They fully concur in the proposed legislation and proposed exchange of notes.

The Department of State strongly urges enactment of the proposed bill in the best interests of the foreign relations of the United States.

Thank you.

Mr. MACDONALD. Thank you very much, Mr. Maurer. I just have a few questions. Do you know of any objections to the proposed transfer?

Mr. MAURER. No; at present we know of none.

Mr. MACDONALD. What value has been placed on the paintings?

Mr. MAURER. I think that is a question that may perhaps be better answered by the Office of Alien Property representative who is now present because they did in fact try to ascertain the value. We think they are valuable, but not of great value.

Mr. MACDONALD. Do you know if they are insured or not?

Mr. MAURER. Yes, we understand from the Office of Alien Property that they are insured.

Mr. MACDONALD. How much are they insured for?

Mr. MAURER. \$140,000 is what they have been insured for.

Mr. MACDONALD. On the bottom part of your statement I just had a question where you say that under existing legislation these paintings could not be returned to Germany even though they were stolen, but existing legislation makes it necessary for them to be sold.

Could you clear that up, for me, at least? I don't quite understand why.

Mr. MAURER. Well, this is another matter in which I think the Office of Alien Property can speak most authoritatively on, but, as we understand the Trading With the Enemy Act, it speaks in terms of the office or agency designated by the President to liquidate German assets and to dispose of them and put the proceeds in the war claims fund, and, as I understand, subject to what the representative of the Office of Alien Property further says, they feel that they have the mandate for German property to seize it, liquidate it, sell it and put the proceeds in the war claims fund.

Mr. MACDONALD. But this goes back to the theft, if I recall your testimony correctly; it was stolen in 1922?

Mr. MAURER. Right.

Mr. MACDONALD. So I don't really see how it falls under Trading With the Enemy. The relationship between the United States and German Republic, if it was a republic in 1922, was a friendly one, was it not?

Therefore, I don't see where Trading With the Enemy comes in. I mean I am not making any big to-do about it. I would just like to have it cleared up for the record.

Mr. MAURER. Our understanding is this: That, while it was stolen in 1922, it was brought here and was here in fact in 1946 in the possession of an American citizen, but the Office of Alien Property analyzing the legal situation found that, although it was in the possession of an American citizen, it was still owned by the original German owner.

They felt they had a duty whenever they found property in the United States owned by a German owner, no matter what its origin, whether it came here by theft or stealing, that they had a duty at that time to vest it and they did vest it in 1946 at a time when we had been through a war with Germany, and they vested it acting under the Trading With the Enemy Act.

Then they also felt that under the Trading With the Enemy Act they had a mandate to sell it and to put the proceeds in the war claims fund.

This, too, they can expand on and the Office of Alien Property representative can speak to when he appears before you.

Mr. MACDONALD. Thank you. Mr. Adams?

Mr. ADAMS. Who owned the property in 1946? Was the determination made? You say an American citizen held it, and then was the ownership decreed to be in the Republic of Germany.

Mr. MAURER. My understanding is that the Office of Alien Property had a legal memo written by its General Counsel which went to the point that the ownership was in the Weimar Museum for the two paintings, excluding the Rembrandt, and ownership was probably in the Weimar Museum for the third painting, the Rembrandt, with a possibility that with respect to the third painting there might be some vestigial interest in the Duke of Weimar Saxon.

Mr. ADAMS. They were not individually owned by Germany and citizens of a particular German Government? Is that what you are telling me?

Mr. MAURER. That is what I am telling you, with the possible exception of the Rembrandt, but I think our own feeling and the feeling of the Office of Alien Property is that this was very improbable that the real ownership was really in the Weimar Museum.

Mr. ADAMS. Just one last question. It is still the legal opinion of the Department of Justice that they cannot transfer this, assuming that we have a friendly state relationship now with the German Government and, as Mr. Macdonald pointed out, had an original friendly state relationship with the Republic of Germany?

It is still their legal opinion that they cannot transfer it to a friendly government?

Mr. MAURER. Yes, sir.

Mr. ADAMS. Thank you.

Mr. MACDONALD. Mr. Springer.

Mr. SPRINGER. I want to ask this question. In the bill they used these words: "to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

I want to be sure that there is no doubt that we are vesting the title in the Federal Republic of Germany. Are we doing that?

Mr. MAURER. I think I may answer in this way. There is no question that we are turning over the paintings to the Federal Republic of Germany to hold in trust for eventual return to the Weimar Museum.

Mr. SPRINGER. All right. These words are awfully important, "in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

Is that the kind of agreement you are going to make?

Mr. MAURER. Yes. We have given the text of that agreement as an enclosure to the letter that we sent in recommending the passage of this legislation.

Mr. SPRINGER. Are you going to vest title then in the Federal Republic of Germany in trust?

Mr. MAURER. We are going to transfer it in trust.

Mr. SPRINGER. I just want to be sure of this because I don't want to get over to the floor and have someone raise the question of whether we are transferring this to a Communist country.

We would just be in all kinds of soup. That is the kind of thing we run into on the floor and someone is going to ask it, and I want to be sure that we are going to transfer this to the Federal Republic of Germany to transfer it at their discretion. And I take it they are not going to transfer it until they get some kind of an agreement between the two countries with reference to these matters, and I suspect the first thing that will come out from East Germany will be an attack that we are refusing to return their stolen property.

This will be another approach to this, and you know as well as I do, having been in East Germany, the tactics they use over there on these kinds of things.

But there is no doubt that you are returning this and vesting title in the Federal Republic of Germany in trust?

Mr. MAURER. Yes, sir. That is clear, and that is in fact the language we have in the agreement.

Mr. SPRINGER. All right.

Mr. MAURER. I can read that to you. The language we have in the letter to the Federal Republic of Germany is: "I have the honor to propose that upon transfer by the Attorney General of the title and possession of three paintings to the Federal Republic, the following terms shall apply. The Federal Republic shall hold the paintings in trust for eventual transfer to the Weimar Museum."

Mr. SPRINGER. That is enough. Thank you.

Mr. MACDONALD. Along that line, if the committee does not mind my interjecting myself again at this point, I take it from your answers to Mr. Springer that the Weimar Museum in the State of Thuringia, Germany, is in East Germany.

Mr. MAURER. Yes, it is in East Germany.

Mr. MACDONALD. How can anyone be held to know that eventually the Federal Republic of West Germany is going to deal with East Germany so it will be transferred to East Germany?

As I understand it, at the moment the feeling between the two Germanys is not exactly cordial.

Mr. MAURER. I think certainly nobody can predict exactly what may happen in the relations between the Federal Republic and East Germany, but I think Mr. Shackleton may be best qualified to talk to that point.

Mr. SHACKLETON. Well, sir, I believe that one must assume that reunification will someday take place and at that point the Federal Republic as the Government of Germany will return these to the museum.

Mr. MACDONALD. Has the State Department cleared this with the Russians?

Mr. SHACKLETON. No, sir.

Mr. MACDONALD. I think that is a pretty big assumption, that they are going to be reunified.

Mr. SHACKLETON. Sir, it would be impossible for me to say when this will take place. In fact I don't know that one can say that it will take place, but the assumption of all of our policy is that Germany will be reunified. This is a major aim of course of our foreign policy.

Mr. MACDONALD. And since this is a subcommittee of the Committee on Interstate and Foreign Commerce, I just don't want to get in the foreign relations field, but does the State Department feel it was necessary to include that language "for eventual transfer to the Weimar Museum" in East Germany?

Mr. SHACKLETON. Yes, sir. We could not return it to the Soviet Zone because we have no relations with it. The Federal Republic of Germany is the only Government authorized to speak for all the German people.

Therefore, the only authority in Germany to which we could return the paintings would be the Federal Republic in Bonn.

Mr. MACDONALD. I just raise this because, as Mr. Springer indicated, we may have to defend this on the floor and I would rather ask you the questions now and have it in the record so that we can have something to defend, but actually the Federal Republic of Germany is not the rightful owner; is it?

Mr. SHACKLETON. No, sir.

Mr. MACDONALD. And then aren't we returning something to somebody who never had original property rights in it?

Mr. MAURER. This is so, but you understand that we view that we have made the proper adjustment for a situation which exists; namely, we believe this painting really belongs to the German people, if you will.

The Federal Republic of Germany is the representative of the German people, that we consider the representative of the German people. We consider that we are acting perfectly appropriately in turning them over to the Federal Republic of Germany in trust for eventual return.

In other words, there is a recognition that ultimately this should go to the Weimar Museum. When that will take place would be when the conditions are ripe for it and when unification takes place or there is something of a similar nature.

Mr. MACDONALD. Mr. Farnsley.

Mr. SPRINGER. May I ask one question.

Mr. MACDONALD. Mr. Springer.

Mr. SPRINGER. You reduce this to the irreducible. The Federal Republic of Germany is the only legal German Government that we recognize. Is that correct?

Mr. SHACKLETON. Yes, sir.

Mr. SPRINGER. So, therefore, the only legal party to whom you can return it is them. Is that correct?

Mr. SHACKLETON. Yes, sir.

Mr. SPRINGER. Now, you admit that the Weimar Museum is the proper owner of it; is that correct?

Mr. SHACKLETON. Yes, sir.

Mr. SPRINGER. But you are returning it to them to be held in trust until such time as that Government either comes under the Federal Republic of Germany or Germany is so united that there is a government that can return it to the proper owner. That is in effect what you are saying; is that correct?

Mr. SHACKLETON. That is correct.

Mr. SPRINGER. I just want to be sure about this vesting in trust since you have it to just one party that we recognize.

Mr. MACDONALD. I would just like to point out that the reporter can't see your head nod. You better have it in the record. Your answer was in the affirmative to all those questions?

Mr. SHACKLETON. We could not, in other words, return this to the Government of the German Democratic Republic for return to the Weimar Museum. We do not have relations with the German Democratic Republic.

Mr. MACDONALD. Mr. Farnsley.

Mr. FARNSLEY. I think I know the answer, but why not just give this to the West German Government? Why add the "in trust"?

Mr. MAURER. I think the answer to that is that we think this is something which does belong to the Weimar Museum and that in terms of getting it back to the Weimar Museum it was most appropriate to give it in trust for eventual return.

I think that must be the answer.

Mr. FARNSLEY. That is just saying we think this is right. Is that part of our policy of trying to unite the two Germanys that we are putting it in trust? If we think the West German Government represents Germany as far as we know why not give it to them and let them decide what to do about it?

I am not arguing. I am not advocating this. I am just asking. Maybe it is something you can't tell me. Maybe it is a secret.

Mr. MAURER. No, I don't believe there is any particular secret in it. It happens that this may be of a little help in trying to cement the two Germanys, but frankly we don't think it has much leverage, if you will, and it is basically on the notion that we deal with the Federal Republic of Germany and we feel that it is proper to give it to them in trust for eventual return, and the Federal Republic of Germany has not itself said, "Give it to us in clear and free title."

They have themselves gone along with and concurred in this manner of dealing.

Mr. SHACKLETON. There is a question of where the rightful ownership lies.

Mr. FARNSLEY. What is the question?

Mr. MAURER. In view of the fact that our view is that the Weimar Museum is the rightful owner, then we would feel perhaps reluctant

to give it in full title and complete title rather than in trust to the Federal Republic of Germany.

Mr. FARNSLEY. Thank you.

Mr. MACDONALD. Are there any further questions?

Mr. CURTIN. Mr. Chairman.

Mr. MACDONALD. Yes, Mr. Curtin.

Mr. CURTIN. I notice by your statement that this American citizen acquired these paintings in 1934 but it was in 1946 when the Office of Alien Property got in the act. What triggered this?

Mr. MAURER. I think the Office of Alien Property representative may be able to give you the particulars. I gather that he attempted somehow in 1945 or 1946 to dispose of the paintings and in the course of inquiries which the museum raised that he was trying to dispose of two—I think it was the Dayton Museum—it came to the attention of the Office of Alien Property that there was this background and history and then they took investigating action.

Mr. CURTIN. That is what I am curious about. What was the intention of the study?

Mr. MAURER. Perhaps the Office of Alien Property custodian can talk to that particular.

Mr. CURTIN. He is here?

Mr. MAURER. Yes.

Mr. CURTIN. Thank you.

Do you know what the American citizen paid for these paintings?

Mr. MAURER. There was a curious story that forms part of the record. The seaman is supposed to have gone out on a night on the town with a Dayton, Ohio, citizen and at the end of the night on the town the Dayton, Ohio, citizen found he didn't have his wallet, but he had the paintings.

Mr. CURTIN. This is a curious story.

That is all.

Mr. MACDONALD. Thank you.

Would the next witness, who I believe is Mr. Anthony Mondello, come forward please, Mr. Mondello, representing the Department of Justice.

#### **STATEMENT OF ANTHONY L. MONDELLO, CHIEF, OFFICE OF ALIEN PROPERTY, DEPARTMENT OF JUSTICE**

Mr. MONDELLO. Mr. Chairman, I have no prepared statement as such. I am available for whatever questions any of the members would like to ask.

Mr. MACDONALD. The previous witness referred several questions to you so you can start by answering those.

Mr. MONDELLO. I will try to field them as best I can.

I do have with me a copy of the opinion rendered in 1947 by John Ward Cutler, Acting General Counsel of the Office of Alien Property, in which he took up the question of the title to these paintings that might have been in the person who possessed them in 1945 and 1946.

He ran an inquiry into the law of two States, the law of the State of New York where the so-called purchase transaction took place, whatever that may have been, and the law of the State of Ohio where by prescription a thief conceivably could have obtained title to the paintings or a taker from the thief might have done so.

Mr. MACDONALD. I just would like to interrupt at that point. Basically, that is just not possible to obtain title by way of thievery under U.S. law.

Mr. MONDELLO. Under Ohio law—perhaps I stated that badly, Mr. Chairman—if a thief steals property and takes it away from the locale in which he stole it and ultimately sells it off to a purchaser who has no knowledge of the theft, it is possible and permissible for that purchaser, according to the law of wherever he resides, if he holds this property openly and notoriously or if he returns to the place from which it was stolen and holds it openly and notoriously and during that period, whatever it is in the State of Ohio—I believe the period was 6 or 10 years—had it been done for that extensive period it is possible that as against all the world because of the prescription of time he might have held good title.

Mr. ADAMS. You are comparing the prescription doctrine to the adverse possession doctrine in real property; is that correct?

Mr. MONDELLO. No, sir; this relates only to personal property.

Mr. ADAMS. I know, but I say you are applying prescription, which is the personal property equivalent of adverse possession in real property.

Mr. MONDELLO. Yes, sir; I think so.

Mr. ADAMS. And it is 6 to 10 years in Ohio. I mean that length of time passed.

Mr. MONDELLO. There is a specific period of time. What the General Counsel's opinion is, though, is a comment on the circumstances relating to these paintings which were held by him in his attic.

They were not openly and notoriously held in any fashion and the time period had not run under the State of Ohio, so that he could not conceivably have obtained title by virtue of his possession of these objects outside the State where he got them and in the State where he resided.

The examination also took into account the New York cases, which haven't changed to this day, which indicated that no purchaser from a thief there could have gotten title to these paintings.

By the way, your question, sir, was how did the Office of Alien Property learn of these things. I believe we learned it initially from an FBI report which was furnished to the Office of Alien Property at the time the paintings were first brought to the Dayton Art Institute and nobody knew what they were and the Director of the Institute reported both to the FBI because he was suspicious of what they might be, and he also make inquiry of the Metropolitan Art Museum and other museums in order to achieve some identification of the paintings because he did not in fact know whether they were authentic originals.

Mr. CURTIN. If I may interrupt you, do I understand that these paintings were offered to some art gallery for sale and that is what brought the whole thing to light?

Mr. MONDELLO. We are informed, and this is hearsay evidence in our hands, but we are informed by the couple who possessed the painting that the individual who got it in New York, for example, while he was still in New York went to a number of galleries to determine what it was that he had because when he received it he had learned from the German seaman that this purported to be an original Rembrandt.



He did not get the verification he desired in New York and when he went back to Ohio he simply put it in a footlocker and left it in his attic for a number of years.

It wasn't until about 1945 that his wife discovered it with the other paintings and began to try to authenticate it. She thought she had from some literature she read and then she then took it to the Dayton Art Institute for complete verification and in assisting this lady to verify that these were authentic originals it got a little more notorious even than was intended.

The FBI learned of it and the Office of Alien Property learned of it and then because of the General Counsel's opinion that, No. 1, these people did not have title to the paintings and that title probably resided in German nationals, then the impact of the Trading With the Enemy Act almost required that these properties be vested and placed with all of the other vested property, and liquidate or do whatever had to be with such property.

Mr. CURTIN. Was there any reason why the names of these people could not be disclosed. I notice you mentioned this person and that person.

Mr. MONDELLO. I would like not to disclose them. I have no idea whether this can be damaging to the reputation of a man who may by this time be a prominent businessman somewhere and it would just be unseemly on our part I believe to divulge this information.

In the hearing before the Senate and in the consequent publication of a confidential print of their report it hasn't seemed desirable to put it in.

The matter did come up and I suggested this to the staff of the Senate subcommittee and it was decided by them that it would be inadvisable to repeat the names.

Mr. CURTIN. The method of acquisition from this German sailor by this American citizen whom you don't want to name seems almost incredible. They were out on the town and instead of paying a bar bill turned over these paintings, one of which was a Rembrandt.

Mr. MACDONALD. No, those are not the facts. The facts are that they went out on the town, according to the testimony, and then the next morning apparently, the seaman had left and he left with the American citizen's wallet, and therefore, he felt that he had purchased these paintings because the seaman took the wallet——

Mr. CURTIN. And left the paintings.

Mr. MACDONALD. Which presumably contained money and left the paintings instead of the money.

Mr. MONDELLO. Yes. Mr. Chairman, if I may add a slight note to that, apparently the seaman attempted to sell these to the American citizen the day prior.

They were apparently in each other's company for a couple of days and the American citizen just was not buying and then they did have their night on the town and the story is, as we get it from the couple themselves, is that when he woke up the next morning after having rejected the offer to sell, he found that he did in fact possess the paintings and did not in fact possess his wallet or the money in it.

Mr. CURTIN. By a rather strange coincidence. Was there a very large sum of money in that wallet?

Mr. Mondello. He does not say so and we have no idea what the amount was.

Mr. MACDONALD. Before you get off the subject of money, the question was referred to you as to the value of the paintings, both individually and then collectively.

Mr. MONDELLO. First of all, I would like to correct the record as to the value for which they had been insured. The Rembrandt is insured at a value of \$140,000, Terborch is insured at a value of \$2,000, and the "Portrait of a Young Woman," by Tischbein, is insured at a value of \$1,200—the grand total being \$143,200.

We have tried in the past to inquire into the value of the paintings and I do not believe that, short of an actual sale, you are going to ever come out with much more than expert valuations if you procure them.

Our files do not contain a record of an appraisal. I am also told by the person who restored these paintings—I am sorry, I don't have the pictures of them, the before and after pictures we had, but I should explain these things were not well taken care of.

The Rembrandt, for example, which is about 2 feet wide by 3 feet long, was rolled on itself with the paint on the inside and the backing of the canvas on the outside, so that cracks appeared completely across the painting in the process of the creasing that took place when it was rolled and, apparently, placed under something and pressed.

All three paintings were slightly damaged, but the Rembrandt more severely than the other two. The Office of Alien Property some years ago hired the restorer who works for the National Gallery of Art, who did in fact restore them, and, to my unexpert eye, he did a tremendous job.

They looked like the kind of paintings you see that are in the museum that appear as though they just had not been touched since they had been painted.

There are two schools of thought I am told about how this kind of restoration affects valuation. There is a school that believes that paintings of this character should never be touched, that no paint should be added 300 years later to one of these original works of art.

The other school suggests that the only way you can tell the true kind of painting it was is to restore it. I asked at the gallery about what effect restoration would have on value. I was talking to two people then, both of whom are presumably expert, one of whom was the actual restorer who did the work, and they differ as to whether the price would be enhanced or the price would go down.

You can read in the press about old masters being sold from time to time at auction and see the price that they bring, but there is no way to tell, short of putting this to sale, I don't suppose, just where it fits in the general scheme of things.

I have no way of knowing whether this is one of Rembrandt's best works, worse works, or whatever.

Mr. MACDONALD. I have two questions and then will turn to the committee for whatever questions they might have to fill out your statement.

I still am not clear in my own mind, and I would hate to, under the present conditions, defend on the floor, why the Alien Property Act is invoked in this instance.

From my facts—you correct me if I am wrong—in 1922 we had friendly relations with Germany and in 1946 we did. Therefore, I do not quite understand how it gets invoked.

Mr. MONDELLO. Well, I would like to try to answer this slightly in backward fashion, if you will. There is in the Trading With the Enemy Act, section 39 which prohibits returns of vested property to Germany and its nationals as well as to Japan and its nationals, and that same provision, section 39, requires that the net proceeds remaining upon completion of the admission, liquidation, and dispossession of vested property shall be covered into the Treasury for deposit in the War Claims Fund.

Mr. MACDONALD. And this includes stolen goods too?

Mr. MONDELLO. It does not specifically mention stolen goods. It simply applies across the board to vested property.

Mr. MACDONALD. That takes me to my second question. I did not follow the title to the paintings very clearly. The two German soldiers stole the paintings in what year?

Mr. MONDELLO. 1922.

Mr. MACDONALD. 1922. And then we are lost as to what happened to the paintings until this merchant seaman showed up in the United States with them. What year was that?

Mr. MONDELLO. 1934.

Mr. MACDONALD. 1934?

Mr. MONDELLO. Yes, sir.

Mr. MACDONALD. And in 1934 somebody in New York took possession of the paintings?

Mr. MONDELLO. Yes, sir.

Mr. MACDONALD. And then they got to two other people in Ohio?

Mr. MONDELLO. No. The person who took possession in New York was a Dayton, Ohio, citizen and he simply took the paintings back home with him.

Mr. MACDONALD. And it is that person and his wife who called it to the attention of the Dayton Art Institute?

Mr. MONDELLO. Yes, sir.

Mr. CURTIN. Will the gentleman yield?

Mr. MACDONALD. Yes.

Mr. CURTIN. I understood that the husband got out of the picture and then the wife found these and then she proceeded. Is that correct, or do I have a misunderstanding?

Mr. MONDELLO. I think you understood. Our information is that while these paintings were still in the possession of the husband, he simply had them in the attic and the wife was simply the moving party of the two.

Mr. CURTIN. The husband is still in the picture?

Mr. MONDELLO. Yes, sir.

Mr. CURTIN. One other question. Did this couple in Ohio file any type of legal protest about the taking of this property from their possession by the Alien Property Custodian?

Mr. MONDELLO. No, sir; they never did. We were in communication with them. They knew that we had taken the paintings. They had a copy of the vesting order, as a matter of fact, sent to them which described why we took it, which answers your question more directly.

In 1946 the vesting power was still in existence. The President did not exercise his discretion not to vest until 1953 and in 1946 there were any number of investigations taking place with respect to property which was believed to be property of German or Japanese citizens and which was physically located in this country.

This merely became one of many investigations. Once the determination was made that title to this property was in German citizens, it then became like all other property available to be vested and it was vested on the basis that title was either in the Weimar Museum or in that then regal family that had given possession to the Weimar Museum and was a long time ago contesting with the Weimar Museum as to who owned it, whether the family did or the museum.

We did not seek to disturb that title or anything except what it meant to us was since only Germans could conceivably own it, under that set of circumstances then we had the power, probably the duty at that time, to vest it and so it was vested.

The vesting order makes recitations of that sort.

Mr. MACDONALD. Well, yes; but once again being the devil's advocate, because I might have to defend this on the floor, and you know more about it than I do. If we are giving it back to the museum in a country that we don't recognize—

Mr. MONDELLO. Well, we are actually giving it back to the Federal Republic.

Mr. MACDONALD. It gets a little complicated.

Mr. MONDELLO. It may get complicated, sir, but I suggest this. If we take these paintings on the basis that it would be helpful to our foreign policy because they are part of the cultural heritage of Germany and give them to that part of the German nation which we do recognize, we give it only in trust.

We make no attempt to interfere with whoever owns that painting in Germany. There is no doubt that it was publicly held, and what we would be doing in effect is what the German's would be doing if the situation were reversed and gave to the U.S. Government in trust until such time as it could give over to a State, or to the public museum in a State, a valuable work of American art.

Mr. MACDONALD. What State does the Federal Government not recognize? Mississippi?

Mr. MONDELLO. We don't have the war situation and what has happened with the cold war in Germany, but this is as close as you can come to setting up a parallel.

Mr. MACDONALD. I don't think it is a very clear analogy, frankly. I am bothered about the fact that, as I stated to the previous witness—I would like your comment about it—that we are giving it to a government in trust to be turned over to a museum when the two countries become one, and I think that is quite a presumption.

Mr. SHACKLETON. Sir, may I make a statement?

Mr. MACDONALD. I think you did already, Mr. Shackleton. I would be happier to hear from you after I hear Mr. Mondello.

Mr. MONDELLO. I am afraid, sir, this is beyond my competence. I know nothing about foreign policy except what I read in the newspapers and I can tell you what the Trading With the Enemy Act requires, but I have no notion.

Mr. MACDONALD. Yes, Mr. Shackleton.

Mr. SHACKLETON. Sir, the Weimar Museum was a public authority and as such in order to return them to that museum today it would require our turning the paintings over to the authority for the so-called German Democratic Republic, with which, of course, we do not have relations.

Therefore, logically, we must give it to the Federal Republic of Germany. Now, if the Federal Republic of Germany, sir, were to

decide to give it to the Weimar Museum today, I believe that it could after receiving the paintings from us; but this is a legal question and I could not go into it in detail.

Mr. CURTIN. Will the gentleman yield?

Mr. MACDONALD. Yes, I would be happy to in just a minute. Does West Germany have relations with East Germany?

Mr. SHACKLETON. No, sir.

Mr. MACDONALD. How could they turn them over to some place that does not exist?

Mr. SHACKLETON. I raise the hypothetical point that if the Federal Republic were to decide to do this, I assume that they could under the terms by which we would give them the paintings.

Mr. MACDONALD. Mr. Curtin?

Mr. CURTIN. I have just one question. Do I understand that you have previously said that there is some dispute in Germany as to whether these paintings are owned by the Weimar Museum or by some couple that placed them in the Weimar Museum?

Mr. MONDELLO. We understand that there was a dispute. As a matter of fact, I can tell you what our information is on it very briefly. We were fortunate in having at the Fogg Museum in Harvard a person by the name of William Koehler, who is the former director of the Weimar Museum, but by the time the war broke he came out and he was in this country.

He says this in a letter to us back on September 27, 1946:

The Rembrandt portrait was lent to the museum by the Grand Duke of Saxon Weimar around the year 1909 and remained his property until after the revolution of 1918.

At that time the highest court of the state of Thuringia, Oberlandsgericht, acting as an arbitration committee agreed upon by both the representatives of the state of Thuringia and those of the Grand Duke's family, decided that, in exchange for certain concessions in other matters, the works of art lent by the Grand Duke to the museum should remain permanently in the custody of the state, among them the Rembrandt portrait.

I better read on:

I do not entirely trust my memory in regard to the wording of the arbitration. I am not sure whether a full transfer of ownership was decreed or a permanent custody by the State involving only practical loss of ownership on the part of the Grand Duke's family.

Now, I tried to determine whether we could find in the Library of Congress or other repositories of foreign legal documents, and case reports, and so on, a copy of an arbitration decree of any sort about that.

I was unsuccessful and I don't know that it exists anywhere in the United States. So we do not yet get the terms, but that is a German legal title question that certainly the Office of Alien Property need have no concern with.

So long as both are Germans we could vest and that is what we did.

Mr. MACDONALD. On that point, and I hate to keep coming back to it, you are not returning it to the person or the association that held title to it. You are returning it to an alien government as far as the two Germanys are concerned.

That is what puzzles me. It does not puzzle me because I know what you want to do and I am in accord with what you want to do, but that is a difficulty that certain Members of the House who want to harass it will bring up.

I would like some ammunition to answer them when they ask what seems to me to be a reasonable question.

Mr. MONDELLO. I would like to suggest this. We are friendly with the West German Government, the Federal Republic of Germany. To the extent that the problem arises by virtue of giving the object to someone that does not have title to it and just placing it in trust is concerned, this is a question I think you can fairly leave to a rather refined judicial system in Germany.

If people in Weimar want to try to get at the paintings, I presume that they can sue the German Government if there is a basis for suit and standing and all the various consents, just as anyone here in this country could litigate a question of title of this sort in a suit.

It is not a question we have to determine. In fact, it is not a question we could.

Mr. MACDONALD. What is the difference between our passing this bill or passing a bill saying that we are going to give these paintings back to the Government of Italy for the Weimar Museum in trust until such a time that East Germany becomes reunited with West Germany?

Do you follow my question?

Mr. MONDELLO. Yes, sir, and I think we have the power to do that. When we took title under the Trading With the Enemy Act our title is defensible in this country. Our title is defensible against all comers. I don't know what the situation would be if we would give it to Italy under the terms you suggest and then somehow the matter could be subjected to litigation in Italy.

Mr. ADAMS. Would the gentleman yield?

Mr. MACDONALD. Yes.

Mr. ADAMS. I want to follow directly on this point.

We have already made a legal determination as to title. This is what is bothering Mr. Macdonald. It was bothering me. When we say that this is given to the West German Government in trust for the Weimar Museum, the U.S. Government has stated that they have made a determination as to who owns this painting.

It goes back to Mr. Farnsley's question and we are trying to ride two horses at the same time. We either give it to the German Government and they decide between litigants within their system, or we give it to the individual directly.

We aren't doing either in this case here. We are giving it to the German Government, but saying, "No, you can't decide where it goes." It really belongs to the Weimar Museum, and this is bothering us because we have made this determination and it could be used certainly as a defense, I would say, by the German Government to giving it to anyone except the Weimar Museum.

Mr. MONDELLO. I don't think anything that has been done in the proposed language of this bill constitutes a determination of title.

Mr. ADAMS. Then you would have no objection to doing what Mr. Farnsley asked, which would be just to strike the portion in here that says "to be held in trust for eventual transfer to the Weimar Museum"?

Mr. MONDELLO. I think what we did by that language was to suggest that the custody of these paintings which had been taken from the Weimar Museum should be restored to the Weimar Museum. From that point on let anybody fight about title that wanted to, but

we didn't think we should make that determination. I don't think the statutory language does it.

Mr. ADAMS. The bill does.

Mr. MONDELLO. I don't think so.

Mr. ADAMS. It says "to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum." We are constituting that Government trustee with the equitable interest in the Weimar Museum. Now, I don't want to quibble about the legal terms, but I worry about, and I think it is justifiable, that you are riding two horses.

We just want to know which one to end up on if we have to choose between one of the two.

Mr. MONDELLO. I think a former version of this proposed statutory language did include use of the word "title" and it was deleted on the suggestion that we should not be making a determination of title and it was left open so that we could simply restore custody as it was in 1922.

Mr. MACDONALD. I would just like to add a third course because the language also says that what we have been discussing would be done, "in accord with the terms of an agreement to be made," so actually we are just giving out a blank check.

How do we know what the agreement is going to be?

Mr. MONDELLO. The State Department can speak to that. The terms of the agreement are known.

Mr. MAURER. Let me speak to one or two of the points that have been made.

Mr. MACDONALD. Would you answer that one first because it is in my mind.

Mr. MAURER. Yes, I think I can answer that one first. The terms of the agreement are already cleared, as it were, between us and the Federal Republic of Germany and they are reflected in the documents we have given the staff and which we gave to the Senate committee, and they are that title and possession do go to the Federal Republic of Germany and the Federal Republic of Germany shall hold the paintings in trust for eventual transfer to the Weimar Museum on the same basis such paintings were held by the museum prior to April 18, 1922.

That is the language. Now, we are fully confident on the basis of the studies that we have made that really the Weimar Museum was possessed of full title of two of the paintings and we think was possessed of full title of the third painting, the Rembrandt, with the possibility that the Weimar Museum had what you might call was permanent custody with a vestigial interest in the Duke of Saxon Weimar, so that we think by this language that we are getting it back to the state it was in 1922 and that is the way it should be.

Mr. MACDONALD. If that is so, sir, why don't we strike the words "in accord with the terms of an agreement" and why don't we strike "to be made"?

Mr. MAURER. We have given you the text of the agreement. The text of the agreement is known and the agreement allows us—

Mr. MACDONALD. Why then, if you will permit me, shouldn't it read "in accord with the terms of an agreement between the United States and the Federal Republic of Germany"?

Mr. MAURER. I am sorry.

Do I understand that all you are suggesting is putting in the terms "between the United States and the Federal Republic of Germany"?

Mr. MACDONALD. It is all I am saying. On line 4 on page 2 of the bill strike "to be made", which is a clause in between "agreement" and "between."

Mr. MAURER. The bill reads "in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany" and are you suggesting the dropping of "to be made"?

Mr. MACDONALD. Yes. That is what strike means.

Mr. MAURER. Well, but I don't think that would change it in any respect in the sense that the agreement is still to be made. It doesn't exist at the present time. We haven't exchanged notes with the Federal Republic of Germany yet.

Mr. MACDONALD. You just read from the agreement.

Mr. MAURER. We read from the text of the proposed agreement.

Mr. MONDELLO. Without the legislation we have no authority.

Mr. MACDONALD. All right.

Mr. MAURER. These notes would be exchanged after the legislation had passed. I think I have answered one question of yours.

The second question was rather than turn it over to the Federal Republic of Germany to be held in trust for an agreement to be made, why don't we turn it over to the Italian Government.

Mr. MACDONALD. I was using that by way of illustration.

Mr. MAURER. The only point I would make as to that is that the appropriateness it seems to us is quite clear of turning it over to the Federal Republic of Germany, which in the meantime until it decides about eventual return to Weimar may very well keep this painting in its own museum, show it to its own people, and it seems totally appropriate to let them be the holder for the meantime.

Now, a third suggestion which has been made, and I think in a sense this runs the gamut of possibilities, is why don't we just give it in fee simply to the Federal Republic of Germany. This is Mr. Farnsley's suggestion and it is one of the things that I say we considered, but frankly we reached a decision that this belongs to the Weimar Museum.

We would prefer to give it to the Federal Republic of Germany to be held in trust. We think it appropriate because that is where the title, we think, resides, rather than give it in fee simple title to the Federal Republic of Germany.

Now, you also raise the question—let me say this—why not give it to the individuals concerned, and I think there have been two answers to that. One, that the individual here is a public institution, the Weimar Museum. It is under the German Democratic Republic and we don't recognize that regime and we look to the Federal Republic of Germany as the authorized representative of the German people, and this is not such a heterodoxical situation, as I might point out by one example.

For instance, when the U.S. Government deals with the Polish Government with respect to American claimants we could make an agreement by which the Polish Government will pay the American claimant itself, but the agreement that we generally make is we get \$40 million or \$20 million from the Polish Government and then we set up the Foreign Claims Settlement Commission to distribute the claims amongst American claimants.



In other words, we act in terms of talking to governments generally and in terms of their seeing out for the best interests of their people, and I think this must be considered as being part of the situation with respect to the particular solution which we have embodied in this legislation.

Mr. CURTIN. Will the gentleman yield?

Mr. MACDONALD. Yes.

Mr. CURTIN. Assuming that we turn these paintings over in the manner that you are indicating, supposing eventually that the Government of the West German Republic does not recognize it and they hold them in trusteeship, but really say that they have fee simple title to them and then eventually when the two countries are joined put them in a German museum and say that is where they are going to stay.

Would not the American Government, under those circumstances, be responsible to the Weimar Museum for the value of those paintings because we recognize the Weimar Museum owned them at the time we turned them over to another party?

Mr. MAURER. I think maybe one or two answers.

First, the agreement to be made with the Federal Republic of Germany is an international agreement—

Mr. CURTIN. It wouldn't affect the Weimar Museum.

Mr. MAURER. Which binds the Federal Republic of Germany to us and if the Federal Republic of Germany did something in transgression of the international agreement we would have all the rights that we could vindicate in the International Court, if you will, so that I think basically we have an agreement with the Federal Republic of Germany which we think will be complied with by the Federal Republic of Germany and if it should not be we would have the right in international forum, but we really don't contemplate that the Federal Republic of Germany would do anything that will be in violation or in breach of what it has committed us to.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Are there any further questions?

Mr. ADAMS. Yes. I just wanted to know from the Alien Property Custodian what is your general policy when you are returning property that has been vested in the United States, in the Alien Property Custodian, to another government?

Don't you ordinarily, for example, if we have something out of a museum—well, let us stick with Italy—and we seized it during hostilities, just simply return this to the Government of Italy and let them deal with their citizens about it?

Mr. MAURER. I think this is the answer. Normally we have procedures under the Trading With the Enemy Act whereby individuals file claims with the Trading With the Enemy—

Mr. ADAMS. You deal government to government?

Mr. MAURER. No. Wait. I think this will clarify it.

If anybody has a claim before the Office of Alien Property they file a claim with the Office of Alien Property and if it is an individual he gets the property directly and if it should be in some case a government—for instance, we may have vested by mistake something belonging to the Government of the Netherlands, or maybe we vested something relating to the Italian Government.

Now, in that case it might be that we would give it just merely under the procedures of the Trading With the Enemy Act. I think in the case of Italy there might have been some difficulties and they entered into an international agreement with us, but it isn't to my knowledge unorthodox for an ordinary claim by Government to be submitted to the Office of Alien Property and for the Office of Alien Property to make a simple return to the Government involved.

Mr. ADAMS. All right. I anticipate somebody will ask these two questions.

One, was this actually vested before the cessation of hostilities, the official cessation of hostilities between the United States and the German Government?

Mr. MONDELLO. Yes. That occurred in October, I believe, of 1951.

Mr. ADAMS. That is what I thought. This was during the continuation of hostilities in official form so there is no problem about our title there.

Second, if the question is asked, Does this follow the general form under the Trading With the Enemy Act for the return of property to a claimant? what do we answer, yes or no?

Mr. MONDELLO. I think the answer has to be "No." This is a relatively unusual development. In normal course what we do is——

Mr. ADAMS. Ordinarily you just have title. You could give it to anybody you want or you could sell it, couldn't you?

Mr. MONDELLO. Well, yes, but we normally are in the business of making returns of dollars because we have already liquidated the property.

In this case we hadn't done so. If the claimant caught us early enough so that we could make a return in kind and he was eligible for a return, we would give him the property back.

If it was shares of stock he would get the shares of stock. Whatever it was he would have gotten it back.

Mr. ADAMS. Did we do this?

Mr. MONDELLO. Yes; we did,

Mr. ADAMS. Generally if a German claimant, say in West Germany, came in and said, "This is my painting" and you still had it you would or wouldn't have given it to him? He sold it so you have got it.

Mr. MONDELLO. If you change the example from a German to, say, one of the overrun countries, the answer is "Yes."

Mr. ADAMS. I want to stay with the enemy.

Mr. MAURER. Let me answer that question. I think I have the answer.

Mr. Mondello has not been as specific as I think the situation warrants. If the property belonged to an enemy country like Germany there have been no returns at all.

Mr. ADAMS. They don't get anything back.

Mr. MAURER. They don't get anything back.

Mr. ADAMS. If it is a German citizen?

Mr. MAURER. He gets nothing back if it is a German citizen. So that what we are dealing with here is something which is admittedly German-owned, but which we believe is part of the cultural heritage of Germany, so that we need legislation to return the property.

Mr. ADAMS. That gets down to the final point.

You ordinarily do not return property to the enemy. It has been sold and gone. In this case you are returning it and for a specific pur-

pose—you mentioned cultural heritage—only you are not returning it to the country that has control of it now.

Now, do you feel that you should say in this case because it is so unusual that it could go in trust for the individual as opposed to just giving it because you never usually give it to the government at all for anybody.

Mr. MONDELLO. I think that is right.

Mr. MACDONALD. Just a final question.

Mr. Shackleton, you raised something that these people always seeing Communists under the bed might raise.

You said, if I recall your statement correctly, that in your opinion once we turned this over to the West German Government they then, if they wanted to, could turn it over to the museum in East Germany.

In effect, if what you say is so, and I would like the comment of your counsel about this, wouldn't that have us indirectly deal with a Communist country which we don't recognize?

Mr. SHACKLETON. I don't think that we would be dealing indirectly with them, sir, but we seek to return them to the German Federal Republic Government because it is the only legal authority that we recognize for all of Germany.

Mr. MACDONALD. I am not talking about that. I am talking about your statement that they then within a week or 2 weeks could, if they saw fit, turn around and hand it over to the Communist regime in East Germany.

Mr. SHACKLETON. I raise that only as a theoretical possibility, sir.

Mr. MACDONALD. It is a theoretical possibility and it would be an embarrassing theoretical possibility to be raised on the floor and I would like your counsel's comment about it.

Mr. MAURER. Yes. We have been rather explicit in the note which we presented to you on this very situation.

Mr. MACDONALD. I haven't seen the note.

Mr. MAURER. I have read it to you already about holding in trust for eventual return on and the same basis such paintings were held by the museum prior to April 18, 1922.

The next sentence reads:

The Federal Republic shall determine when conditions are appropriate for the transfer of the three paintings to the Weimar Museum. The Federal Republic shall notify the Department of State in advance of a transfer to the Weimar Museum.

So we have set forth exactly the situation. Now, it is theoretically possible for the Federal Republic of Germany the next week to deal and then merely to notify, but the realities of the situation are quite clearly different.

They would consult with us before and we would be indicating what our views might be.

Mr. MACDONALD. What would the State Department say?

Mr. MAURER. First of all, they wouldn't be thinking of turning it over tomorrow, and then if they did we would probably say we think that is a little bit ill advised.

The other thing I would like to say in answer to your question is, the Federal Republic of Germany, as Mr. Shackleton will confirm, maintains informal relations with the German Democratic Republic on certain matters. They are trade matters and things of that type. We have low-level informal contact. We don't think they are going

to be bringing this up in any of these informal contacts, but we don't believe at all that by reason of their bringing it up that somehow they are representing us or that we are talking with them, and let me put it this way.

I think you must be apprised of the realities of some of these matters. We maintain informal contacts in Warsaw with the Communist Chinese, if you will, which we don't recognize, and I think there is a certain little give and take here.

Mr. ADAMS. Mr. Chairman, I suggest that the drafts of the notes of the agreement be supplied and be made a part of the record.

Mr. MACDONALD. Without objection, it is so ordered.

(The information referred to above follows:)

(To AMBASSADOR OF FEDERAL REPUBLIC OF GERMANY).

EXCELLENCY: I have the honor to refer to discussions between representatives of the Department of State and the Embassy of the Federal Republic of Germany with respect to the disposition of three paintings by Rembrandt, Terborch and Tischbein vested by U.S. Vesting Order No. 8107, January 28, 1947, which belonged originally to the Weimar Museum. The three paintings are:

1. Rembrandt: Self Portrait
2. Terborch: Portrait of a Man
3. Tischbein: Portrait of a Young Woman

I enclose herewith a copy of the legislation which the United States Congress recently passed authorizing the United States Attorney General to transfer the three paintings to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, "in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

I have the honor to propose that, upon transfer by the Attorney General of the title and possession of the three paintings to the Federal Republic, the following terms shall apply:

1. The Federal Republic shall hold the paintings in trust for eventual transfer to the Weimar Museum on the same basis such paintings were held by the Museum prior to April 18, 1922. The Federal Republic shall determine when conditions are appropriate for the transfer of the three paintings to the Weimar Museum. The Federal Republic shall notify the Department of State, in advance, of a transfer to the Weimar Museum.

2. Until the transfer is made, the Federal Republic shall hold, care for and safeguard the three paintings in the same way as it would art treasures of its own.

If the foregoing proposal is acceptable to the Federal Republic of Germany, Your Excellency's reply to that effect and this note shall constitute an agreement effective on the date of the reply.

Accept, Excellency, the renewed assurances of my highest consideration.

SECRETARY OF STATE (or for the Secretary of State).

EMBASSY, FEDERAL REPUBLIC OF GERMANY.

(To THE SECRETARY OF STATE).

EXCELLENCY: I have the honor to refer to your note of concerning the disposition of three paintings by Rembrandt, Terborch and Tischbein, vested under U.S. Vesting Order No. 8107, January 28, 1947, which belonged originally to the Weimar Museum, Weimar, State of Thuringia, Germany.

My Government has advised that the proposal contained in your Excellency's note is acceptable.

It is my understanding that this reply and your Excellency's note of constitute an agreement effective on the date of this reply.

Accept, Excellency, the renewed assurances of my highest consideration.

AMBASSADOR,  
Federal Republic of Germany.

Mr. FARNSLEY. I am not advocating this. I am just asking. What would you think if we put in the bill "for eventual transfer to the Weimar Museum in the event of a merger?"

Somebody said you wanted East and West Germany to get together and conceivably they could make a little deal. We say that we can transfer after they have merged.

Mr. MAURER. I think if the committee or the Congress felt that it was desirable to pin that down that way the State Department would go along with it and I think we would in fact want to consult with the Federal Republic of Germany on it, but we have thought that that is a straitjacket type of provision or we think it is too strict in view of the uncertainties as to what in the next 10 or 20 years may emerge, and we view this as a long-range agreement.

Mr. FARNSLEY. You are straightjacketing the Weimar Museum. Nobody knows what will become of the Weimar Museum. Somebody may steal the whole museum and title. You want a straightjacket that it goes to the museum but you don't want a straightjacket that it goes after they merge, although you are very anxious for them to merge, and you won't give them to the Weimar Museum now and you suspect that they won't merge.

Mr. MACDONALD. Will the gentleman yield to me?

Mr. FARNSLEY. Yes.

Mr. MACDONALD. This perhaps is none of my concern or business, but I don't think that the State Department through any representations wants to go on record as saying that the State Department and the administration favor a reunification of Germany.

Mr. MAURER. Oh, I am sorry, I think we definitely do go on record as saying we favor the reunification of Germany. This is a standard ironclad policy of the State Department.

Mr. SHACKLETON. Indeed, that is the policy.

Mr. MACDONALD. That is the official American policy?

Mr. SHACKLETON. That we favor the reunification of Germany, indeed, sir. Sir, may I make a comment to Mr. Farnsley?

Mr. MACDONALD. Even though the Russians might, if this were put into effect, take over all of Berlin? The French obviously are afraid of it, and all the people in Europe who suffered under a militant unified Germany are certainly opposed to that position, aren't they?

Mr. SHACKLETON. Sir, we favor a reunification of Germany under peaceful means under a democratic government. I am not sure that I understand your question exactly, sir.

Mr. MACDONALD. My question is that it was my opinion, and I am glad I learn something every day here in Washington, that the reunification of Germany is a very thorny subject which the administration has never publicly stated, that I have ever seen, that they favor because there are so many countries in Western Europe with whom we are trying to maintain friendly relationships who fear a reunification of Germany.

Am I incorrect in that?

Mr. MAURER. No; I think you are not correct in the sense that the State Department has as one of its standard policies now from the end of the war the reunification of Germany. The reunification would be on terms which would mean that the people who constitute the majority of the German people would be in control, and we have not any feeling ourselves that that would mean it would be the Democratic Republic in control of all of Germany, and one of the things which we have constantly emphasized, and Mr. Shackleton can confirm it, is that reunification would be accomplished by free elections in which the Ger-

man people would express their view, and we have full confidence that a democratic German Government would emerge and this would be the most hoped for consummation of the difficulty.

Mr. MACDONALD. I am glad I came to the hearings this morning. I learned not only about paintings, but I learned something about State Department policy. Are there any further questions of the witnesses?

Thank you all very much.

Mr. MAURER. Thank you very much.

Mr. MACDONALD. The hearing is adjourned.

(Whereupon, at 11:23 a.m., the hearing was adjourned to reconvene subject to the call of the Chair.)













74 IN 8/4:89-47

# LEASING OF CLARINDA, IOWA, AIRPORT PROPERTY

---

HEARING  
BEFORE THE  
SUBCOMMITTEE ON TRANSPORTATION  
AND AERONAUTICS  
OF THE  
COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES  
EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

## H.R. 10700

A BILL TO AUTHORIZE THE ADMINISTRATOR OF THE  
FEDERAL AVIATION AGENCY TO RELEASE RESTRICTIONS  
ON THE USE OF CERTAIN REAL PROPERTY CONVEYED TO  
THE CITY OF CLARINDA, IOWA, FOR AIRPORT PURPOSES

---

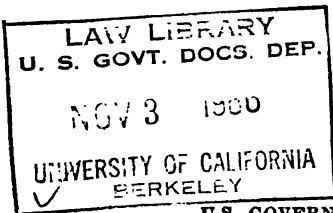
SEPTEMBER 27, 1966

---

Printed for the use of the Committee on Interstate and Foreign Commerce

---

Serial No. 89-47



U.S. GOVERNMENT PRINTING OFFICE

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

**HARLEY O. STAGGERS**, West Virginia, *Chairman*

WALTER ROGERS, Texas  
 SAMUEL N. FRIEDEL, Maryland  
 TORBERT H. MACDONALD, Massachusetts  
 JOHN JARMAN, Oklahoma  
 LEO W. O'BRIEN, New York  
 JOHN E. MOSS, California  
 JOHN D. DINGELL, Michigan  
 PAUL G. ROGERS, Florida  
 HORACE R. KORNEGAY, North Carolina  
 LIONEL VAN DEERLIN, California  
 J. J. PICKLE, Texas  
 FRED B. ROONEY, Pennsylvania  
 JOHN M. MURPHY, New York  
 DAVID E. SATTERFIELD III, Virginia  
 DANIEL J. RONAN, Illinois  
 J. OLIVA HUOT, New Hampshire  
 JAMES A. MACKAY, Georgia  
 JOHN J. GILLIGAN, Ohio  
 CHARLES P. FARNSLEY, Kentucky  
 JOHN BELL WILLIAMS, Mississippi  
 BROCK ADAMS, Washington

WILLIAM L. SPRINGER, Illinois  
 J. ARTHUR YOUNGER, California  
 SAMUEL L. DEVINE, Ohio  
 ANCHER NELSEN, Minnesota  
 HASTINGS KEITH, Massachusetts  
 WILLARD S. CURTIN, Pennsylvania  
 GLENN CUNNINGHAM, Nebraska  
 JAMES T. BROYHILL, North Carolina  
 JAMES HARVEY, Michigan  
 ALBERT W. WATSON, South Carolina  
 TIM LEE CARTER, Kentucky

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

### *Professional Staff*

ANDREW STEVENSON  
 KURT BORCHARDT

JAMES M. MENDER, Jr.  
 WILLIAM J. DIXON

## SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

**SAMUEL N. FRIEDEL**, Maryland, *Chairman*

JOHN D. DINGELL, Michigan  
 J. J. PICKLE, Texas  
 DANIEL J. RONAN, Illinois  
 J. OLIVA HUOT, New Hampshire  
 JOHN BELL WILLIAMS, Mississippi

SAMUEL L. DEVINE, Ohio  
 GLENN CUNNINGHAM, Nebraska  
 ALBERT W. WATSON, South Carolina

## CONTENTS

---

<b>Text of H.R. 10700</b> .....	<b>Page</b> <b>1</b>
<b>Report of—</b>	
Bureau of the Budget.....	3
Federal Aviation Agency.....	1
General Services Administration.....	2
<b>Statement of—</b>	
Bennett, Thomas P., administrative assistant, on behalf of Hon. John R. Hansen, a Representative in Congress from the State of Iowa.....	7
Bowers, Chester G., Deputy Director, Airport Service, Federal Aviation Agency.....	3
Sales, Walter R., city manager, Clarinda, Iowa.....	11
<b>Additional material submitted for the record by the Chamber of Commerce     of Clarinda, Iowa: Statement of John Hunter, president</b> .....	11



# LEASING OF CLARINDA, IOWA, AIRPORT PROPERTY

**TUESDAY, SEPTEMBER 27, 1966**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS  
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C.**

The subcommittee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The meeting now will come to order.

The Subcommittee on Transportation and Aeronautics meets today to consider H.R. 10700—a bill to allow the city of Clarinda, Iowa, to lease for nonairport purposes a portion of real property which was conveyed to that city for airport purposes. This legislation was introduced by our colleague, Congressman John R. Hansen. (H.R. 10700 and agency reports thereon follow:)

[H.R. 10700, 89th Cong., 1st sess.]

**A BILL To authorize the Administrator of the Federal Aviation Agency to release restrictions on the use of certain real property conveyed to the city of Clarinda, Iowa, for airport purposes**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 16 of the Federal Airport Act, the Administrator of the Federal Aviation Agency is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622c), to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated March 26, 1947, under which the United States conveyed certain property to the city of Clarinda, Iowa, for airport purposes.*

**FEDERAL AVIATION AGENCY,  
OFFICE OF THE ADMINISTRATOR,  
Washington, D.C., September 2, 1966.**

**HON. OREN HARRIS,**  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Agency with respect to H.R. 10700, a bill to authorize the Administrator of the Federal Aviation Agency to release restrictions on the use of certain real property conveyed to the city of Clarinda, Iowa, for airport purposes.

The purpose of this bill is to permit the city of Clarinda, Iowa, to lease, for non-airport purposes, a certain portion of real property conveyed to that city for airport purposes. The airport property which Clarinda would lease was formerly surplus Federal property and was conveyed by quitclaim deed on March 27, 1947, without cash consideration to Clarinda under Section 16 of the Federal Airport Act.

Section 16 of the Federal Airport Act provides that whenever the Administrator of the Federal Aviation Agency deems that use of any lands owned or controlled by the United States is reasonably necessary to carry out a project under that Act or for the operation of a public airport he shall file with the head of a department or agency having control of the lands a request that such property

interest as he determines necessary be conveyed to the local public agency sponsoring the project or owning the airport. If the head of the department or agency involved determines that a conveyance of such interest is not inconsistent with the needs of that department or agency, he is authorized and directed, with the approval of the President and the Attorney General, to make the conveyance requested. Section 16 further provides, however, that each such conveyance "shall automatically revert to the United States in the event that the lands in question are not developed, or cease to be used, for airport purposes."

Land conveyed pursuant to the provisions of Section 16 is generally not land that has been found to be surplus to the needs of the Federal Government. The only determination made with respect to the request for transfer, other than the determination that land is needed for airport purposes, is that use of the land for public airport purposes would not be inconsistent with the needs of the agency having control over the land. Property is not determined to be surplus to the needs of the Government until it has been found that no other department or agency has need for it. Further, if any property is determined to be surplus to the needs of the entire Federal Government, it is disposed of in accordance with provisions of the Federal Property and Administrative Services Act or the Surplus Property Act, as amended. However, in the case of the land at Clarinda, the Administrator of the War Assets Administration made a prior finding that the property was surplus to the needs of the Government.

At the time of the conveyance to Clarinda the only authority for the conveyance of this surplus property for airport purposes and without consideration was Section 16 of the Federal Airport Act. However, four months after this conveyance, Section 13(g) of the Surplus Property Act was enacted authorizing conveyance of surplus property for airport use without consideration. If Section 13(g) had been available at the time of the Clarinda conveyance, the property involved would have been conveyed under that section. The significance of that fact is that if the property had been conveyed under Section 13(g) and not under Section 16 of the Federal Airport Act, the Administrator of the FAA would have the authority to release this property for non-airport uses, and there would be no need for special legislation. In light of this consideration, we have no objection to enactment of H.R. 10700 to authorize the Administrator to convey a portion of the property for non-airport uses as if the property had been originally conveyed as surplus airport property. Since the conveyance would under the bill be regarded as if it had been a surplus property conveyance, the bill should, as H.R. 10700 does, apply certain other conditions applicable to property which was actually conveyed as surplus property, specifically the addition of the provisions of Section 4 of the Federal Property and Administrative Services Act. That section requires that before property is released for non-airport purposes the Administrator of FAA must find that the property to be conveyed no longer serves the purpose for which it was transferred or that the release of the property will not prevent accomplishment of the purpose for which the property was transferred and is necessary in order to protect or advance the interest of the United States in civil aviation. It further permits the Administrator of FAA to impose conditions on any conveyance of surplus airport property made for non-airport uses. It would permit us to require the proceeds of the non-airport use to be applied to airport maintenance and development, a condition we intend to apply.

The Bureau of the Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely,

WILLIAM F. MCKEE,  
Administrator.

GENERAL SERVICES ADMINISTRATION,  
Washington, D.C., September 22, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of September 15, 1966, invited any comments that the General Services Administration may care to offer concerning H.R. 10700, 89th Congress, a bill "To authorize the Administrator of the Federal Aviation Agency to release restrictions on the use of certain real property conveyed to the city of Clarinda, Iowa, for airport purposes."

We are informed by representatives of the Federal Aviation Agency that the purpose of the bill is to permit the city of Clarinda to lease a portion of the airport



property and use the proceeds toward the maintenance and improvement of the airport. Further, it is our understanding that the FAA favors this proposed legislation as commensurate with their program objectives.

Although the proposed legislation is more appropriately the concern of the Federal Aviation Agency, the General Services Administration would have no objection to its enactment.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, Jr.,  
*Administrator.*

---

BUREAU OF THE BUDGET,  
*Washington, D.C., September 30, 1965.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of August 28, 1965, for the views of the Bureau of the Budget on H.R. 10700, a bill "To authorize the Administrator of the Federal Aviation Agency to release restrictions on the use of certain real property conveyed to the city of Clarinda, Iowa, for airport purposes."

In view of the special circumstances set forth in the report of the Federal Aviation Agency on this bill, the Bureau of the Budget would have no objection to its enactment.

Sincerely yours,

PHILIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

Mr. FRIEDEL. Mr. Chester Bowers, Deputy Director of the Airports Service of the Federal Aviation Agency will be the first witness.

**STATEMENT OF CHESTER G. BOWERS, DEPUTY DIRECTOR,  
AIRPORTS SERVICE, FEDERAL AVIATION AGENCY**

Mr. BOWERS. Thank you, Mr. Chairman.

Mr. Chairman, Congressman Devine, I am Chester Bowers, Deputy Director of the Airports Service of the Federal Aviation Agency.

We appreciate this opportunity to appear this morning to assist in your consideration of these bills.

The Agency has already submitted to the committee letters in which our views on the bills are set out in the record. H.R. 10700 and S. 2434, the Senate-passed bill also before you, would authorize the Administrator of the FAA to permit the city of Clarinda, Iowa, to lease for nonairport use, a portion of an airport which was donated to Clarinda by the Federal Government in 1947. The legal conditions under which the property was donated provide that if the property is not used for airport purposes it will automatically revert to the Government.

We believe that it is fair to release Clarinda from the restriction that this property be used only for airport purposes. Under the Surplus Property Act, airport property donated for airport use can be released by the Administrator for nonairport use if he finds that the property no longer serves the purpose for which it was donated, or if he finds that release of the property would not prevent accomplishment of the purpose for which the property was transferred and is necessary in order to protect or advance the interest of the United States in civil aviation.

The Administrator has, in the past, released many surplus property airports or portions thereof for nonairport use. The bill before you would place the Clarinda Airport property in the same category as as other surplus property airports insofar as the Administrator would be authorized to release portions of the property for nonairport use.

In fact, if this property had been conveyed 4 months later than it was, namely, after the enactment of section 13g of the Surplus Property Act instead of before it, the property would have been releasable in the discretion of the FAA Administrator and this legislation would not have been necessary.

As we understand it, Clarinda intends to lease a portion of the airport property for use as a meatpacking plant. This could be done in a manner which would not interfere with the airport operation. The airport operation would receive a direct benefit from the nonairport operation. This is due to the fact that any nonairport use of the property which would be authorized by these bills would be subject to reasonable conditions imposed by the Administrator of the Federal Aviation Agency.

The FAA would require that the proceeds from nonairport use of the property be used in support of the airport.

Mr. Chairman, that concludes the part of my statement relating to Clarinda. If there are any questions I should be happy to answer them.

Mr. FRIEDEL. Mr. Devine, any questions?

Mr. DEVINE. Yes.

Mr. Bowers, apparently you made a study here, but you have shown nothing to the committee, no charts, no indication of what the location of this meatpacking plant would be, what interference it may or may not have with the operation of the airport.

Do you have any chart here to indicate this?

Mr. BOWERS. No. I do not, sir.

Mr. DEVINE. Could you describe it without any charts?

Mr. BOWERS. The airport property, which was a prisoner of war camp in World War II and transferred to the city under section 16 of the Federal Airport Act, consists of approximately 500 acres, I believe.

The proposal would be to use about 40 acres, 38 or 40 acres, for nonairport use; namely, lease for a meatpacking plant.

Mr. DEVINE. Is any portion of this 40 acres in line with any of the landing strips?

Mr. BOWERS. The bill would authorize the Administrator of the FAA to grant the release upon determination and finding that the proposed use would in no way interfere with the operation or future development of the airport. The bill itself does not provide for the release. It authorizes the Administrator to grant the release upon finding that these conditions—

Mr. DEVINE. From having some knowledge of meatpacking plants, sometimes they have high stacks and things like that around them. If they are going to put a plant there it could of course interfere with approaches, takeoffs, and things of that nature.

Mr. BOWERS. That is very correct.

Mr. DEVINE. Are you satisfied that nothing like this will occur. Is that true?

Mr. BOWERS. That is correct, and I assure you, sir, that the Federal Aviation Agency would not grant a release until it was satisfied beyond

doubt that that there would be no interference with either the operation of the airport or its future development.

Mr. DEVINE. This is mere authorizing legislation and it does not cause the conveyance to be made. It leaves with the FAA the discretion as to whether or not to make the release; is that true?

Mr. BOWERS. That is correct.

Mr. DEVINE. That is all I have, Mr. Chairman.

Mr. FRIEDEL. Mr. Cunningham?

Mr. CUNNINGHAM. No questions.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Mr. Chairman, perhaps one or two.

I am sorry I wasn't here at the beginning of your testimony, Mr. Bowers.

What type aircraft is the Clarinda Airport able to accommodate now? What is the length of the runway?

Mr. BOWERS. The length of the runway is 2,900 feet I believe, so it is strictly an airport that serves what we call general aviation aircraft, nonairline aircraft, of course.

It takes the single engine aircraft and should accommodate some of the small, light twin-engine aircraft.

Mr. WATSON. I see.

So far as you know has there been any objection on the part of the commercial or private fliers in the area to the release of this area to that meatpacking company?

Mr. BOWERS. Not as far as I know, sir.

Mr. WATSON. No objection from the Private Pilots Association?

Mr. BOWERS. As far as I know there has not been. As I mentioned earlier, this legislation would authorize a release. It does not grant the release.

Mr. WATSON. Yes, sir.

Mr. BOWERS. So the Administrator of FAA would assure himself that there is no problem with the aviation use of the airport in the granting of this release.

Mr. WATSON. The reason I ask these questions is we have been wrestling with a similar problem in Columbia, S.C. We have a fine new airport. We have the old one which is downtown.

In my judgment it is not ideal even for small aircraft and yet the pilots still want it, as they say, for an auxiliary landing strip or what have you.

Is there any provision for a hearing before the property is actually released by the Commission or by some local authority, or are you knowledgeable on that?

Mr. BOWERS. As far as I know there is no provision made for a hearing.

Mr. WATSON. Thank you very much.

Mr. FRIEDEL. Is this field a grass strip, or is it paved?

Mr. BOWERS. Mr. Chairman, it consists of two strips—one a turf strip 2,900 feet long, and the other is a turf strip 2,900 feet long as well, but on this turf strip there is a 50-foot wide by 2,100-foot bituminous area.

As I understand it, the entire length of 2,900 feet is available for landing and takeoff, but there is a bituminous runway, so called, on the strip.

Mr. FRIEDEL. Mr. Bowers, presently what are the terms of the proposed lease and what would be the length of the lease?

Mr. BOWERS. I do not know that, Mr. Chairman. The Federal Aviation Agency has not made a decision on granting a release. This is legislation that would place Clarinda in the same position as if it were a surplus airport. The airport was transferred to the community 4 months before the Surplus Property Act was passed and used other legislation, so all this would do would be permit the Administrator of FAA to treat it as a surplus airport and to go into these questions when we receive a formal application from Clarinda for the release.

Mr. FRIEDEL. Do you know what is the present market value of the property which Clarinda proposes to lease?

Mr. BOWERS. No; I do not, sir.

Mr. FRIEDEL. Mr. Springer, any questions?

Mr. SPRINGER. No questions.

Mr. WATSON. Mr. Chairman, may we ask Mr. Bowers one further question?

Mr. FRIEDEL. Any questions, John Bell Williams?

Mr. WILLIAMS. I have no questions.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. How extensively is this airport used to date? Do you have any figures of the number of takeoffs and landings there?

Mr. BOWERS. An estimate made by the local airport operator. He estimates a total of 6,700 operations annually. There were, in March of this year, 11 aircraft based at the field. Eight of them were four-place or larger. I presume they were all four-place, but the listing I have is four-place or larger.

Mr. WILLIAMS. Will the gentleman yield?

Mr. FRIEDEL. Mr. Williams.

Mr. WILLIAMS. Is there another airport in that area?

Mr. BOWERS. Yes.

Mr. WILLIAMS. That is available to these aircraft?

Mr. BOWERS. There is a small strip nearby. As far as I know it is not paved and I do not have the information on the length.

Mr. WILLIAMS. Is this a paved strip?

Mr. BOWERS. I am not sure.

Mr. WILLIAMS. I am sorry I came in late.

Mr. BOWERS. You asked about Clarinda, or the other airport?

Mr. WILLIAMS. Clarinda.

Mr. BOWERS. Clarinda has a bituminous strip 50 feet wide by 2,100 feet long situated on a 2,900-foot landing strip.

Mr. WILLIAMS. Do they have lights? Is it lighted?

Mr. BOWERS. There is a beacon and there are lights to show the taxiway exit. I am not sure whether the strip is lighted or not.

Mr. FRIEDEL. Mr. Bowers, I understand that we have Mr. Bennett, administrative assistant to our colleague, the Honorable John R. Hansen, and I understand he has a prepared statement.

Do you want to read that or have that placed in the record, Mr. Bennett?

**STATEMENT OF THOMAS P. BENNETT, ADMINISTRATIVE ASSISTANT, ON BEHALF OF HON. JOHN R. HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Mr. BENNETT. Unless you desire me to read it I will just present it as written testimony, unless you would like me to read it.

Mr. FRIEDEL. Do you want it included in the record, or do you want it read?

Mr. WATSON. Mr. Chairman, if we could I would like to have it read.

Mr. FRIEDEL. It is a brief statement.

Mr. WATSON. It is a brief statement, isn't it?

Mr. BENNETT. Yes, sir, two pages.

I am Thomas P. Bennett, administrative assistant for Congressman John R. Hansen. Mr. Hansen, unfortunately, is out of the city on business and wanted me to present the statement for him.

First of all, I do want to express Mr. Hansen's personal appreciation to this subcommittee for consenting to conduct these hearings on this legislation which does mean so much for the industrial development and economic growth of southwest Iowa.

Mr. Hansen's bill, H.R. 10700, will authorize the Administrator of the Federal Aviation Agency to release restrictions on the use of certain real property conveyed to the city of Clarinda, Iowa, for airport purposes.

With these restrictions removed, the city of Clarinda plans to lease the property for industrial purposes. This property consists of approximately 36 acres and is a portion of a larger parcel conveyed by quitclaim deed to the city of Clarinda on March 26, 1947, by the War Assets Administrator. The conveyance was made pursuant to section 16 of the Federal Airport Act (49 U.S.C. 1115) which authorizes the Administrator of the Federal Aviation Agency to request conveyance of U.S.-owned property to local airport sponsors if such land is deemed necessary to the airport project and is otherwise consistent with the objectives of the Federal Airport Act.

All conveyances made pursuant to section 16 contain a reversionary clause which provides that in the event the property conveyed is not developed, or ceased to be used for airport purposes, it automatically reverts to the United States.

Because of that clause, this legislation is necessary in order for the city of Clarinda to lease the property for nonairport purposes.

H.R. 10700 does include the provision that the release of the restrictions is subject to section 4 of the Federal Property and Administrative Services Act (50 U.S.C. 1622c), which requires that before property is released for nonairport purposes, the Administrator of FAA must find that the property to be conveyed no longer serves the purpose for which it was transferred or that the release of the property will not prevent accomplishment of the purpose for which the property was transferred and is necessary in order to protect or advance the interest of the United States in civil aviation.

It further permits the Administrator of FAA to impose conditions on any conveyance of surplus airport property made for nonairport uses.

In this case, it will permit the FAA to require that the proceeds of the nonairport use be applied to airport maintenance and development.

The property in question is not needed for the present or future development of the Clarinda Airport. In addition, the use of the land for industrial purposes would result in a new source of funds to improve the facilities which are vital to the airport.

The city of Clarinda has indicated that it is entirely willing to comply with the conditions to be established by the FAA. The development of that property is of great importance to the industrial and economic growth not only of Clarinda, but of all of southwest Iowa. With the restrictions removed, the property will be leased to the Nodaway Valley Parking Co., an Iowa corporation owned by hundreds of stockholders throughout southwest Iowa.

Presently located adjacent to the airport, the company plans to expand its operations through a \$3 million investment in new construction and equipment. When completed, this facility will bring employment to more than 200 southwest Iowa residents. It will also serve as a spark to attract much-needed new industry to our region of rural America.

It is my understanding that the Federal Aviation Agency, the General Services Administration, the Department of Commerce, and the Department of Justice have no objection to enactment of this bill.

I urge you to approve this legislation and recommend its enactment before this session of Congress is adjourned.

Mr. FRIEDEL. Thank you for the brief statement of our colleague, Congressman Hansen.

Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I thank you very much. Let me pass for the time being. I came in late and I am trying to catch up on the testimony, if I may.

Mr. FRIEDEL. Mr. Devine, any questions?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Huot?

Mr. HUOT. Is this airport operated by the authority, or how is it run? By the city or by the authority?

Mr. BENNETT. It is operated by the the city of Clarinda.

Mr. HUOT. In his statement our colleague said the revenue was going to be used for the improvement of the airport.

Mr. BENNETT. That is correct.

Mr. HUOT. The revenue is going into the general fund of the city, or to an airport fund if it is not controlled by an authority?

Mr. BENNETT. The money that would be coming from the lease, in other words, the money that the city would gain from the leasing the property to the packing company, would go into the airport fund.

Mr. HUOT. Not into the general fund of the city?

Mr. BENNETT. No; into this special airport fund.

Mr. HUOT. Thank you.

Mr. FRIEDEL. Mr. Cunningham?

Mr. CUNNINGHAM. No questions.

Mr. FRIEDEL. Mr. Ronan? Mr. Watson?

Mr. WATSON. Mr. Chairman, perhaps we should direct this to Mr. Bowers. I notice from the testimony of our colleague, Mr. Hansen, that it is permissive for the FAA to require certain stipulations upon this conveyance.

What is the intention of the FAA so far as imposing any restrictions upon this conveyance?

Mr. BOWERS. First of all, as far as the proceeds which have just been discussed, the FAA would require that the net proceeds from the nonairport use of the property be used in the operation, development, and maintenance of the airport.

Assuming the release is granted, there would be a restriction on height of structures on the property. These two are normal. There may be other restrictions, but no decision is made on it. The act would provide authority for the Administrator to place reasonable restrictions on the property. The two that I have spoken of would be automatic. There might possibly be others.

Mr. WATSON. So that I might understand exactly the mechanics of the contract here, is it intended that it be a lump-sum sale for non-airport use, or would it be on an annual or monthly rental basis?

Mr. BENNETT. It would be a monthly rental basis.

Mr. WATSON. It would be on a monthly rental basis, and when we are speaking of the net proceeds, that will be the monthly rental that would go into the city airport fund for maintenance or improvement of the airport itself?

Is that a fair statement?

Mr. BENNETT. That is correct.

Mr. FRIEDEL. Mr. Williams, any questions?

Mr. WILLIAMS. Yes, sir, Mr. Chairman, I would like to ask one or two questions about this.

Mr. Bennett, I presume you are familiar with this area personally; aren't you?

Mr. BENNETT. That is correct. We also have some gentlemen from Clarinda.

Mr. WILLIAMS. As I understand it, and I am in the position Mr. Pickle is in—I wasn't here when the hearing started so I may be going over some ground that has already been covered—but as I understand it, the intention is to retain a portion of this for airport use?

Mr. BENNETT. Yes. We only are talking in terms of 36 acres out of I think originally 300, so we are only taking about 10 percent.

Mr. WILLIAMS. How many runways do you have?

Mr. BENNETT. There were two I believe that Mr. Bowers spoke of.

Mr. WILLIAMS. Will this close one of the runways, Mr. Bowers?

Mr. BOWERS. Mr. Congressman, since I don't know the location of the property I can't tell you what is proposed, but the FAA would not grant a release that would close the runways.

Mr. BENNETT. If I might add, the property that we are talking about, the 36 acres, is not connected with the present or any anticipated future use of the airport. It is on one edge of the airport that is not being used or anticipated to be used.

Mr. WILLIAMS. One further question.

As I understand it, the plans are to relax the restrictions on the use of this property in order to provide some business firm area for expansion?

Mr. BENNETT. That is correct.

Mr. WILLIAMS. I would presume that that would carry with it additional construction.

Mr. BENNETT. Yes, sir.

Mr. WILLIAMS. Does that create any airspace problems? Will the additional construction be in the approach zones or in an area where it might possibly create an airspace hazard?

Mr. BENNETT. I think that the restrictions or the conditions that the FAA would establish before they would authorize this would preclude that happening.

Mr. WILLIAMS. Would you agree with that, Mr. Bowers?

Mr. BOWERS. Yes, Mr. Congressman.

As a matter of fact, the FAA would make its normal airspace review before a release were granted and the record would include a finding that there is no adverse effect on the airport.

Mr. WILLIAMS. Mr. Bowers, I would like to ask you one question just a little bit off the record now.

(Discussion off the record.)

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, this would be a good time to ask my question; would it?

Mr. FRIEDEL. Yes.

Mr. PICKLE. I don't have an objection, but I am asking for information from Mr. Bowers.

According to the testimony of the gentleman from Congressman Hansen's office he makes the statement that all conveyances made pursuant to section 16 contain a reversionary clause which provides in the event the property conveyed were not developed or ceased to be used for airport purposes, it automatically reverts to the United States.

I have a situation in my hometown where the Federal Government had conveyed to the State of Texas, or the reverse, property at a National Guard facility, all of which was not being used and needed by the National Guard unit. They were perfectly agreeable to give this to the city of Austin to develop it for recreational purposes because it was right in the heart of the city.

The Armed Services Committee said that as long as the deed contained this reversionary clause if it was ever used for any purpose other than for National Guard or defense purposes it could not be leased or sold or exchanged in any manner whatsoever, so the bill that I had just faded out because I couldn't get any agreement from the Department of Defense.

Now, in what way does that situation differ from the situation here? Do you have the authority? Is this bill legal if it were passed by the Congress so that you could then allow it? Is your regulation different from what the Defense Department might have?

Mr. BOWERS. I can't speak for the Defense Department, Mr. Congressman, but, first of all, the Surplus Property Act, which is not involved in this bill, permits the Administrator to grant releases when surplus Government property is transferred for airport use.

The Surplus Property Act permits the granting of releases. This particular property was transferred under section 16 of the Federal Airport Act—I am speaking of Clarinda—rather than the Surplus Property Act. Section 16 of the Federal Airport Act requires this reverter provision.

The legislation proposed is to actually treat Clarinda as if it were transferred under the Surplus Property Act. So apparently, I would presume, the military made a transfer under legislation that applies to them which has the same kind of provision section 16 of the Federal Airport Act has.

I really can't give any advice how to get relief on this. This is an area that is outside the Federal Aviation Agency responsibility.



**Mr. PICKLE.** I thank you, Mr. Bowers, and I would like to give a copy of the bill I had introduced and would like to talk to you about it individually later to see how it might differ, but mainly if it is within the purview of our rights from a legislative standpoint is my inquiry to you.

**Mr. FRIEDEL.** Thank you.

I understand that the Honorable Chester Lee, mayor of Clarinda, here; Mr. John Hunter, president of the Clarinda Chamber of Commerce; and Mr. Walter R. Sales, city manager of Clarinda, wa, and I understand all are in favor of the bill.

If there is no objection, we will have such statements as they may wish to supply, included in the record at this point.

(The statement of Mr. John Hunter follows:)

**STATEMENT OF JOHN HUNTER, PRESIDENT OF THE CHAMBER OF COMMERCE OF CLARINDA, IOWA**

**Mr. Chairman,** I am John Hunter, president of the Chamber of Commerce of Clarinda, Iowa. As its president I am representing that organization and the community in behalf of H.R. 10700 now under consideration.

The people in the Clarinda area are vitally interested in the development of industry and the improvement of agriculture. For this purpose over 3,000 people in our area have purchased stock in the amount of \$2,250,000 to build a meat packing plant. This plant will provide a market for our cattle and hogs and employment for our people. We believe it will assist in the decrease of the migration of people from our area. This organization now owns 100 acres which joins the Clarinda airport. The business of meat packing requires sizable quantities of water and waste disposal. The packing company is desirous of having the city provide these services. It is for this purpose and for other industries which we hope to locate in this area in the future that we ask that this legislation be enacted to clarify the restrictions in the original conveyance to the City of Clarinda.

With the added revenue accruing to the city for these services we are certain that we can make a better airport out of the facility we now have.

Thank you for your consideration of this proposal.

**Mr. FRIEDEL.** I would like to know if any one of those three can answer this question.

Briefly, what are the terms of the proposed lease and what would be the length of the lease, the length of time, and what is the present market value of the property Clarinda proposes to lease?

**Mr. SALES.** I will try to answer, sir, if I may.

**Mr. FRIEDEL.** Identify yourself.

**STATEMENT OF WALTER R. SALES, CITY MANAGER, CLARINDA, IOWA**

**Mr. SALES.** Mr. Chairman, my name is Walter Sales. I am the city manager of Clarinda.

Actually we haven't gone that far because a year ago when they first started talking to us about this property was when we found out the lease couldn't be worked out regardless of what the terms might be in the lease. We are up against this roadblock.

And I might say that the value of the particular property that has been mentioned here, this 36 acres, is probably quite low. It is, I would say, in the neighborhood of \$150 an acre and at that time, a year ago, when we were first discussing this we were only talking in terms of around \$30 an acre per year lease.

Does that answer your question?

Mr. FRIEDEL. You don't know the present market value of the property?

Mr. SALES. I would say in the neighborhood of \$150 an acre. There is other property in this area that may well still be considered surplus in addition to this 36 acres that has higher value.

(Mr. Sales' prepared statement follows:)

**STATEMENT OF WALTER SALES, CITY MANAGER OF CLARINDA, IOWA**

Mr. Chairman, I am Walter Sales, city manager of Clarinda, Iowa.

During World War II the U.S. Government built and maintained a prisoner of war camp on a 290-acre site adjacent to the south edge of Clarinda.

After the war the property became surplus to the federal government and in 1947 the entire parcel was conveyed to the City of Clarinda by quit-claim deed pursuant to section 16 of the Federal Airport Act with the agreement that it would be used for airport purposes. All conveyances made pursuant to section 16 contain a reversionary clause so that in the event any part of the property conveyed is not developed, or ceases to be used, for airport purposes, it automatically reverts to the United States.

Since the City of Clarinda has received the property, over \$300,000 has been spent to develop a truly excellent airport for our small city. Approximately \$20,000 is spent annually on its operation and maintenance. The airport facility and future requirements as determined by the FAA approved master plan occupy approximately 180 acres of the total site, leaving over 100 acres in excess of our projected airport needs.

Clarinda's growth is expanding industrially towards and around our airport site. The City now has an opportunity to use the excess area to aid and promote the industrial growth that is so extremely important to the welfare of our community.

Due to the unusual restrictions in section 16 of the Federal Airport Act under which conveyance was made to the City, proper and reasonable use cannot be made of the surplus land areas. At the suggestion of the officials in the Federal Aviation Agency, this bill has been submitted in behalf of the City of Clarinda. This bill makes the conveyance subject to section 4 of the Federal Property and Administrative Services Act which adequately protects Government and citizen interest in the property and will yet allow proper development of the site. Any future development on the property would have to be approved by the FAA, the City would retain control of the site, and all income derived from any improvement thereon would be used for the future expansion and improvement of the airport facilities.

The city has been advised that the Federal Aviation Agency, the General Services Administration, and the Department of Commerce that they approve of this proposed legislation.

We hope that you agree and will assist in the bills enactment.

Mr. FRIEDEL. I thank you. Are there any questions?

All right. Thank you. That concludes the hearing.

(Whereupon, the hearing was concluded.)

Y4. IN 8/4: 89-48

# **CLEAN AIR ACT AMENDMENTS OF 1966**

---

---

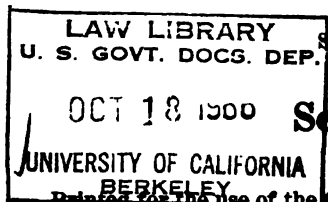
**HEARING**  
**BEFORE THE**  
**SUBCOMMITTEE ON PUBLIC HEALTH**  
**AND WELFARE**  
**OF THE**  
**COMMITTEE ON**  
**INTERSTATE AND FOREIGN COMMERCE**  
**HOUSE OF REPRESENTATIVES**  
**EIGHTY-NINTH CONGRESS**

**SECOND SESSION**

**ON**

**H.R. 13199, S. 3112**

**BILLS TO AMEND THE CLEAN AIR ACT SO AS TO AUTHORIZE GRANTS TO AIR POLLUTION CONTROL AGENCIES FOR MAINTENANCE OF AIR POLLUTION CONTROL PROGRAMS IN ADDITION TO PRESENT AUTHORITY FOR GRANTS TO DEVELOP, ESTABLISH, OR IMPROVE SUCH PROGRAMS; MAKE THE USE OF APPROPRIATIONS UNDER THE ACT MORE FLEXIBLE BY CONSOLIDATING THE APPROPRIATION AUTHORIZATIONS UNDER THE ACT AND DELETING THE PROVISION LIMITING THE TOTAL OF GRANTS FOR SUPPORT OF AIR POLLUTION CONTROL PROGRAMS TO 20 PER CENTUM OF THE TOTAL APPROPRIATION FOR ANY YEAR; EXTEND THE DURATION OF THE PROGRAMS AUTHORIZED BY THE ACT; AND FOR OTHER PURPOSES**



SEPTEMBER 27, 1966

Serial No. 89-48

Printed for the use of the Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE

69-400 O

WASHINGTON : 1966

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

**HARLEY O. STAGGERS**, West Virginia, *Chairman*

<b>WALTER ROGERS</b> , Texas	<b>WILLIAM L. SPRINGER</b> , Illinois
<b>SAMUEL N. FRIEDEL</b> , Maryland	<b>J. ARTHUR YOUNGER</b> , California
<b>TORBERT H. MACDONALD</b> , Massachusetts	<b>SAMUEL L. DEVINE</b> , Ohio
<b>JOHN JARMAN</b> , Oklahoma	<b>ANCHER NELSEN</b> , Minnesota
<b>LEO W. O'BRIEN</b> , New York	<b>HASTINGS KEITH</b> , Massachusetts
<b>JOHN E. MOSS</b> , California	<b>WILLARD S. CURTIN</b> , Pennsylvania
<b>JOHN D. DINGELL</b> , Michigan	<b>GLENN CUNNINGHAM</b> , Nebraska
<b>PAUL G. ROGERS</b> , Florida	<b>JAMES T. BROYHILL</b> , North Carolina
<b>HORACE R. KORNEGAY</b> , North Carolina	<b>JAMES HARVEY</b> , Michigan
<b>LIONEL VAN DEERLIN</b> , California	<b>ALBERT W. WATSON</b> , South Carolina
<b>J. J. PICKLE</b> , Texas	<b>TIM LEE CARTER</b> , Kentucky
<b>FRED B. ROONEY</b> , Pennsylvania	
<b>JOHN M. MURPHY</b> , New York	
<b>DAVID E. SATTERFIELD III</b> , Virginia	
<b>DANIEL J. RONAN</b> , Illinois	
<b>J. OLIVA HUOT</b> , New Hampshire	
<b>JAMES A. MACKAY</b> , Georgia	
<b>JOHN J. GILLIGAN</b> , Ohio	
<b>CHARLES P. FARNSLEY</b> , Kentucky	
<b>JOHN BELL WILLIAMS</b> , Mississippi	
<b>BROCK ADAMS</b> , Washington	

**W. E. WILLIAMSON**, *Clerk*

**KENNETH J. PAINTER**, *Assistant Clerk*

### *Professional Staff*

**ANDREW STEVENSON**  
**KURT BORCHARDT**

**JAMES M. MENGES, Jr.**  
**WILLIAM J. DIXON**

## SUBCOMMITTEE ON PUBLIC HEALTH AND WELFARE

**JOHN JARMAN**, Oklahoma, *Chairman*

<b>LEO W. O'BRIEN</b> , New York	<b>WILLIAM L. SPRINGER</b> , Illinois
<b>PAUL G. ROGERS</b> , Florida	<b>ANCHER NELSEN</b> , Minnesota
<b>DAVID E. SATTERFIELD III</b> , Virginia	<b>TIM LEE CARTER</b> , Kentucky
<b>JAMES A. MACKAY</b> , Georgia	
<b>JOHN J. GILLIGAN</b> , Ohio	

# CONTENTS

<b>Text of—</b>	<b>Page</b>
H.R. 13199.....	1
S. 3112.....	2
<b>Report on H.R. 13199 by—</b>	
Bureau of the Budget.....	6
Comptroller General of the United States.....	8
Federal Power Commission.....	6
General Services Administration.....	8
Health, Education, and Welfare, Department of.....	3
Interior, Department of the.....	5
<b>Statement of—</b>	
Kops, Gerald S., second vice chairman, Milwaukee County Board of Supervisors.....	10
MacKensie, Vernon G., Assistant Surgeon General, Chief, Division of Air Pollution, Public Health Service, Department of Health, Education, and Welfare.....	27
Prindle, Dr. Richard A., Chief, Bureau of State Services, Department of Health, Education, and Welfare.....	23
Rehm, Fred R., deputy director, Department of Air Pollution Control, County of Milwaukee, Wis.....	10
Vivian, Hon. Weston E., a Representative in Congress from the State of Michigan.....	9
<b>Additional information submitted for the record by—</b>	
American Public Power Association, Alex Radin, general manager, statement of.....	120
Health, Education, and Welfare, Department of:	
Abatement actions initiated under the Clean Air Act as of September 29, 1966.....	77
Appropriation limitations proposed for fiscal years 1967, 1968, and 1969, background material relating to.....	73
Budgetary estimates, 1967-72 (table).....	75
Health hazards of air pollution, report on.....	41
Letter dated July 27, 1966, re action of Department in implementing section 103(a) (4) and (5)(B), with attachment, "Programs Under Way and in Prospect for Reducing Sulfur Oxide Emissions from Combustion Sources".....	77
Mayors, U.S. Conference of, John J. Gunther, executive director, letter from.....	119
Milwaukee County Board of Supervisors:	
Air pollution control ordinances and rules and regulations adopted by the Milwaukee County Board of Supervisors.....	83
Tentative 5-year plan and objectives, County of Milwaukee Department of Air Pollution Control.....	12
Wisconsin statutes pertaining to property taxes, income taxes, and air pollution abatement installations (effective August 1, 1966).....	16
National Coal Association, Stephen F. Dunn, president, letter from.....	119
Pennsylvania, Department of Health, letter from C. L. Wilbar, Jr., M.D., secretary of health,.....	125



## CLEAN AIR ACT AMENDMENTS OF 1966

---

TUESDAY, SEPTEMBER 27, 1966

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC HEALTH AND WELFARE,  
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2218, Rayburn Office Building, Hon. John Jarman (chairman of the subcommittee) presiding.

Mr. JARMAN. The subcommittee will please come to order. The hearings today are on H.R. 13199, S. 3112, and related bills extending the Clean Air Act.

In general, these bills would extend that act, which presently expires June 30, 1967, for additional periods ranging from 3 to 5 years, and provide an increase in the authorization for appropriations for the current fiscal year from \$35 to \$46 million.

S. 3112 and H.R. 13199 were each introduced at the request of the administration, and S. 3112 was reported to the Senate with amendments which were agreed to and the bill then passed the Senate on July 12 by a rollcall vote of 80 yeas and no nays.

It is my hope that we can complete these hearings as expeditiously as possible so that we can report a bill to the full committee at the earliest possible date.

At this point in the record there will be included copies of the bills and the agency reports thereon.

(The bills and reports referred to follow:)

[H.R. 13199, 89th Cong., 2d sess.]

A BILL To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Air Act Amendments of 1966."*

### CONSOLIDATION OF APPROPRIATION CEILINGS

SEC. 2. Section 306 of the Clean Air Act is amended to read as follows:

"Sec. 306. There are hereby authorized to be appropriated to carry out this Act, \$46,000,000 for the fiscal year ending June 30, 1967, an such sums as may be necessary for each succeeding fiscal year ending prior to July 1, 1973."

**AUTHORIZATION OF MAINTENANCE GRANTS FOR AIR POLLUTION CONTROL PROGRAMS AND REMOVAL OF TWENTY PERCENT CEILING**

Sec. 3. (a) (1) Subsection (a) of section 104 of the Clean Air Act (88 U.S.C. 1857c(a)) is amended to read as follows:

"Sec. 104. (a) The Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of developing, establishing, or improving, and grants to such agencies up to one-half of the cost of maintaining, programs for the prevention and control of air pollution: *Provided*, That the Secretary is authorized to make grants to intermunicipal or interstate air pollution control agencies (described in section 302(b) (2) and (4)) in an amount up to three-fourths of the cost of developing, establishing, or improving, and up to three-fifths of the cost of maintaining, regional air pollution control programs. As used in this subsection, the term 'regional air pollution control program' means a program for the prevention and control of air pollution in an area that includes the areas of two or more municipalities, whether in the same or different States."

(2) Subsection (b) of such section 104 is amended by striking out "under" in the first sentence and inserting in lieu thereof "for the purposes of", and by inserting in the third sentence the word "control" after "air pollution".

(b) Subsection (c) of such section 104 is amended to read as follows:

"(c) Not more than 12½ per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Secretary shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends."

---

[S. 3112, 89th Cong., 2d sess.]

AN ACT To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Clean Air Act Amendments of 1966".

**CONSOLIDATION OF APPROPRIATION CEILINGS**

Sec. 2. (a) Section 306 of the Clean Air Act is amended to read as follows:

"Sec. 306. There are hereby authorized to be appropriated to carry out this Act, \$46,000,000 for the fiscal year ending June 30, 1967, \$70,000,000 for the fiscal year ending June 30, 1968, and \$80,000,000 for the fiscal year ending June 30, 1969."

(b) Section 209 of such Act is hereby repealed.

**AUTHORIZATION OF MAINTENANCE GRANTS FOR AIR POLLUTION CONTROL PROGRAMS AND REMOVAL OF 20 PER CENTUM CEILING**

Sec. 3 (a) (1) Subsection (a) of section 104 of the Clean Air Act (42 U.S.C. 1857c (a)) is amended to read as follows:

"Sec. 104. (a) The Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of developing, establishing, or improving, and grants to such agencies up to one-half of the cost of maintaining, programs for the prevention and control of air pollution: *Provided*, That the Secretary is authorized to make grants to intermunicipal or interstate air pollution control agencies (described in section 302(b) (2) and (4)) in an amount up to three-fourths of the cost of developing, establishing, or improving, and up to three-fifths of the cost of maintaining, regional air pollution control programs. As used in this subsection, the term 'regional air pollution control program' means a program for the prevention and control of air pollution in an area that includes the areas of two or more municipalities, whether in the same or different States."



(2) Subsection (b) of such section 104 is amended by striking out "under" in the first sentence and inserting in lieu thereof "for the purposes of", and in the next to the last sentence by inserting a comma after the word "funds" and adding "for other than non-recurrent expenditures," and in the same sentence after the word "pollution", the word "control".

(b) Subsection (c) of such section 104 is amended to read as follows:

"(c) Not more than 12½ per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Secretary shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends."

Passed the Senate July 12, 1966.

Attest:

EMERY L. FRAZIER,  
Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
Washington, D.C., September 27, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for a report on H.R. 13199, "To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes." The bill would carry the short title "Clean Air Act Amendments of 1966".

This report is also addressed to a similar companion bill, S. 3112, which (as amended in the Senate) is pending before your Committee.

These bills are intended to carry out proposals announced by the President in his Message of February 23, 1966, on Preserving Our Natural Heritage.

We strongly recommend the enactment of this legislation. For the reason stated below, we recommend that this be done in the version passed by the Senate, with one additional amendment.

(1) *Consolidation, extension, and increase of appropriation authorization.*—The Clean Air Act now authorizes appropriations, except for title II, only through the current fiscal year (1967) for which it authorizes \$35 million; for carrying out title II relating to control of air pollution from motor vehicles, enacted last year, it authorizes appropriations through fiscal year 1969 for which \$1,470,000 is authorized. H.R. 13199 is designed to amend section 306 of the Clean Air Act to consolidate the appropriation authorizations for the entire Act and extend them through fiscal year 1972. To this end, the bill would authorize for such purposes appropriations of \$46 million for the fiscal year 1967 and such sums as may be necessary for each of the five succeeding fiscal years. Through inadvertence, the repeal of the separate authorizations (in § 209 of the Act) was omitted from the House bill; the omission is supplied in the Senate version. In the Senate passed bill, the appropriation authorization has been amended to extend only through fiscal year 1969, and the Senate bill authorizes \$70,000,000 for fiscal year 1968 and \$80,000,000 for fiscal year 1969 in place of open-end authorizations.

The figures contained in the Senate bill are based on estimates furnished by this Department at the request of the Public Works Committee. However, neither the estimates underlying the appropriation ceiling in § 306 of the present Act nor the estimates furnished to the Senate Committee in connection with S. 3112 include any amounts for construction (and initial equipment) of facilities for which authority was conferred on us by section 103(d) of the Act enacted last year, nor would the inclusion of this item in annual appropriation ceilings be a suitable approach. We therefore recommend that the following sentence be added at the end of the proposed revision of § 306 of the Act: "The foregoing limitations shall be exclusive of such sums as may be required for construction (including initial equipment) of facilities pursuant to section 103(d)."

As a by-product of industrialization and urbanization, air pollution continues to be a widespread and growing hazard to the health and welfare of the United States. Although important progress has been made in the brief period since enactment of the Act in 1962, a sustained and accelerated effort is needed if the promise of that Act to prevent and control air pollution is to be fulfilled. We therefore urge favorable consideration of the proposed extension and consolidation of, and increase in, appropriation authorization, with the modification as to construction above recommended.

In our judgment, such consolidation is highly desirable in order to insure that the administration of the regulatory program to control pollution from motor vehicles, required under title II of the Act, will not be impaired by circumstances that could not be anticipated nor provided for under the present separate authorization. If activities under title II were provided for in the same authorization as other program activities, any unexpected increase or decrease in cost might be absorbed by appropriate program adjustments. Such flexibility is of considerable importance, especially because title II of the Clean Air Act prohibits the sale of motor vehicles not in conformance with applicable regulations and the industry will of necessity, in order to protect itself, need a certificate of conformity from the Secretary with respect to a representative test vehicle before marketing vehicles of that class; an undue delay on our part in testing vehicles for conformance, caused by lack of leeway to adjust funds, would work an intolerable hardship and dislocation upon the automobile industry and the economy generally.

Another example which points out the need for consolidation of appropriation authority to achieve flexibility arises from the action of Congress during its consideration last year of the title II legislation. A provision was added in Committee whereby the Secretary, upon application from a motor vehicle manufacturer, is required to issue a certificate of compliance, applicable to a production run, if after appropriate tests a new vehicle is found to meet the prescribed standards. But our cost estimates were furnished to the Committee before this provision was added, yet no corresponding change was made in the title II appropriation authorization to reflect the added cost of vehicle or engine testing which would be required under this provision. Consolidation of appropriation authorization would permit such problems to be dealt with administratively within the scope of the whole Act.

(2) *Grants for maintenance of air pollution control programs.*—The bills would amend § 104(a) of the Clean Air Act to add—to the present authority for grants to develop, establish, or improve air pollution control programs—an authorization for the Secretary to make grants to air pollution control agencies in an amount up to one-half of the cost of *maintaining* programs for the prevention and control of air pollution, and to make grants to intermunicipal or interstate air pollution control agencies in an amount up to three-fifths of the cost of maintaining regional air pollution control programs. (The U.S. Code citation for § 104 of the Act should be 42 U.S.C. 1857c(a), as in the Senate bill, rather than 88 U.S.C. 1857c(a).) The bills would also change section 104(a) of the Act to remove the limitation that no more than 20 percent of the sums appropriated annually under the Act may be used to make grants under that section. The bills would also provide technical amendments to section 104(b) of the Clean Air Act for clarification purposes. The Senate bill (as passed by the Senate) would in addition amend section 104(b) by providing that in order to maintain eligibility for grants an agency need no longer meet its *total* level of expenditures of non-Federal funds for the prior fiscal year for air pollution control; the agency would only have to match its level of *recurrent* expenditures.

Additionally, both bills would amend section 104(c) of the Clean Air Act to provide that in the case of a grant for a program in an area crossing State boundaries, the Secretary would determine the portion of such grant that is chargeable to the 12½ percent limitation imposed by the Act for air pollution control program grants in any one State.

Section 104 of the Act at present authorizes grants to air pollution control agencies only in support of the cost of developing, establishing, or improving programs for the prevention and control of air pollution. This approach authorizes a Federal role limited to providing an initial stimulation of program improvement and subsequent withdrawal of support on the assumption or hope that non-Federal funds will be available to substitute for the Federal share. We believe that this limited role is not adequate for dealing with the problem nationally, nor appropriate for full implementation of the declared Federal

policy. In enacting the Clean Air Act, the Congress established this policy through its finding, as contained in section 101, "that the prevention and control of air pollution at its source is the primary responsibility of States and local government; and . . . that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution". The maintenance and continuation of expanded efforts by State and local air pollution control agencies will require in the future not only stimulatory grant assistance but sustaining grants as well. Sustaining grants, as proposed by these bills, will more adequately reflect the strong Federal interest and responsibility in air pollution control and should significantly improve the effectiveness of programs in giving impetus to greater State and local action.

The above-mentioned modification, contained in the Senate bill, of the maintenance-of-effort requirement of § 104(b) of the Clean Air Act—which would apply to both the new maintenance grants and the establishment and improvement grants under existing law—is substantially as suggested by us in testimony before the Senate Committee. The present law (the third sentence of § 104(b)) provides that no agency may receive a grant during any fiscal year if its expenditures of non-Federal funds for air pollution programs will be less than such expenditures in the preceding fiscal year. Over a period of years, many factors may justifiably cause the level of expenditures necessary to maintain an effective program to fluctuate, such as, for example, non-recurring costs of equipment or facilities acquisition, or the conduct of special studies concerning air quality, special types of sources, or other matters. S. 3112 was therefore amended to modify § 104 of the Act by excluding non-recurring expenditures from the requirement of matching the prior year's expenditures. This is practical. Where the overall workability of the program is not impaired, fluctuations in expenditures resulting from changes in non-recurring costs should not make agencies ineligible for Federal Matching grant support.

The bills, as above stated, would also amend section 104 of the Clean Air Act to delete the provision limiting the total for grants in support of air pollution control programs to 20 percent of the total appropriation under the Act for any year. The existing limitation is undesirable, we believe, in imposing a fixed relationship between such grant funds and the total appropriations for all Federal air pollution activities. Air pollution and the possibilities for control action are subject to rapid change. Over a period of time, the pattern of needs and desirable program balance with respect to research, technical assistance, training, Federal abatement activities, grants to State and local control agencies, and other activities may vary considerably. We therefore believe it would be wise to leave the determination of the relative emphasis to be given to each of these activities to judgments based upon overall requirements existing at any given time.

In conclusion, for the reasons stated above, we urge the prompt enactment of this legislation, with the improvements and corrections contained in the Senate-passed version and the additional amendment (relating to construction and initial equipment) above recommended.

We are advised by the Bureau of the Budget that the enactment of legislation as above proposed would be in accord with the program of the President.

Sincerely,

JOHN W. GARDNER,  
*Secretary.*

---

DEPARTMENT OF THE INTERIOR,  
Washington, D.C., September 27, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives,*  
Washington, D.C.

DEAR MR. STAGGERS: Your Committee has requested this Department's report on H.R. 13199, a bill "To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes."

The bill is intended to extend and increase the appropriation authorization for title I of the Clean Air Act, as amended. It extends the program to June 30, 1973, and authorizes an annual appropriation of \$46 million for the fiscal years beginning June 30, 1967, through June 30, 1973. It also removes the percentage limitation on the amount of appropriations available for grants for air pollution control programs.

This program is administered by the Department of Health, Education, and Welfare, and we defer to its views.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

CHARLES F. LUCE,  
*Acting Secretary of the Interior.*

BUREAU OF THE BUDGET,  
*Washington, D.C., September 27, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of March 7, 1966, requested the views of the Bureau of the Budget on H.R. 13199, "To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes."

This bill carries out proposals contained in the President's Message of February 23, 1966, "Preserving Our Natural Heritage." We are therefore in full accord with the intent of the legislation. However, for the technical reasons outlined in the report of the Department of Health, Education, and Welfare on H.R. 13199 and S. 3112, we prefer enactment of the Senate version of the bill (S. 3112) with the amendment noted in the report of the Department of Health, Education, and Welfare.

The HEW amendment concerns the need to provide for the construction of facilities within the authorization ceilings proposed in the Senate version of the bill. HEW has suggested language to deal with this matter. We would suggest that the Committee consider as a possible alternative to the HEW language the language contained in section 2 of H.R. 13199 authorizing "such sums as may be necessary."

Subject to the above comment, we favor the enactment of the Senate version of H.R. 13199 (S. 3112) as being part of the President's legislative program.

Sincerely yours,

WILFRED H. ROMMEL,  
*Assistant Director for Legislative Reference.*

FEDERAL POWER COMMISSION,  
*Washington, D.C., August 26, 1966.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In response to your request of March 7, 1966, we enclose three copies of the report of the Federal Power Commission on the subject bill, H.R. 13199.

We contemplate release of this report by the Commission to the public within three working days from the date of this letter unless there is a request that its release be withheld.

The Bureau of the Budget advises us that there would be no objection to the presentation of this report from the standpoint of the program of the President.

Sincerely,

LEE C. WHITE, *Chairman.*

## FEDERAL POWER COMMISSION REPORT ON H.R. 13199

The proposed amendments in this bill, which relate principally to the authorization and financing of Federal grants, would extend the duration of the air pollution control programs under the Clean Air Act (42 U.S.C. 1857-18571) until July 1, 1973; authorize grants for maintenance as well as development, establishment or improvement of such programs; and make the use of appropriations for direct research and abatement activities under the Act more flexible by consolidating the appropriation authorizations, increased to \$46,000,000 for fiscal 1966-1967, and by deleting the provision which limited the total of grants for the support of air pollution control programs to 20% of the total appropriation for any year.

The Congressional concern for control of air pollution is manifested in ways which affect the electric utility industry by the Clean Air Act of 1963; the Clean Air Act Amendments of 1965; and the further amendments now pending to expand the existing program. The Act now provides federal grants to technical and financial assistance to state and local agencies to help them develop air pollution control and prevention programs. Thus Congress is encouraging local regulation of stack emissions and other pollution sources. It is now proposed also to provide grants toward maintenance of these regulatory programs once initiated. The Clean Air Act also provides for federal regulation of automotive pollutants and for federal contribution for research and development.

The Federal Power Commission does not administer research programs or pollution control and abatement programs under the Clean Air Act, nor is it responsible for any grants or financial assistance programs thereunder. This Commission's interest in air pollution problems stems from the use of fossil fuels in the generation of electric energy. The Commission's National Power Survey Report, issued in 1964, gives prominent recognition to the problems of air and water pollution and their significance in relation to the design, location, and operation of large thermal-electric plants and the report points up the possibilities for combatting air pollution through mine-mouth generation and greater interconnection of utility systems. The air pollution issue has been presented to us in a number of gas certificate matters under the Natural Gas Act involving boiler fuel uses of gas in metropolitan areas. Increasing use of large nuclear plants for baseloading also will alleviate air pollution in many areas. Unlike plants operated with fossil fuels, nuclear plants do not emit organic wastes or carbon dioxide.

Because it is more difficult to control emissions from multiple sources like automobiles than to control single sources like power plants, the possibility of electric-powered cars is of particular interest to air pollution officials, as well as the electric power industry. The automobile is the chief source of the air pollution problems plaguing a number of large metropolitan areas. Some engineering research has been going on with respect to such matters as the amount, character and control of automotive exhaust and crankcase emissions, but with less than complete success, so far as we are able to determine. We believe that a balanced research program will continue to devote funds to such conventional research.

In order to maintain a balanced research program with respect to auto exhaust emissions, substantial funds should be provided for research and development of cleaner burning fuels, and reduction or elimination of pollutants emitted from conventional internal combustion engines. We believe such research will have an immediate as well as significant long-term effect on the air pollution problem without producing the corresponding adverse financial impact on state and federal tax revenues.

Electric-powered automobiles, however, are a new way of attacking the air pollution problem and if successful, could contribute greatly to its solution. Although there has been a revival of interest and some progress in vehicles of this type in recent years, some important technological breakthroughs are still required before they can compete successfully with the gasoline-powered automobile. Presently available battery-operated vehicles have a maximum range of approximately 75 miles between charges. If such cars can be produced and operated at sufficiently low cost and the range limitation overcome, they might achieve considerable popularity as the second or third car in a household, to be used for relatively short errands. Much progress remains to be made in this field, as well as in the development of the fuel cell as a practical and economical source of power for this purpose. (See Report of the Surgeon

General, "Motor Vehicles, Air Pollution, and Health," H. Doc. No. 489, 87th Cong., 2d Sess., p. 29.)

The Federal air pollution program offers great opportunity for the electric utility industry, particularly in the research sphere. In commenting last year to the Senate Public Works Committee on the Clean Air Amendment bill (S. 308, 89th Cong.), the Federal Power Commission urged that Federal air pollution control research be directed in part to revolutionary advancements, such as rechargeable batteries for motor vehicles and electrified mass transportation, to handle at least part of the traffic now driven by internal combustion engines. The Commission noted that energy conversions in modern electric power plants are far more efficient than those in internal combustion auto engines, so that the total pollutant potential would decrease, and the combustion refuse would be concentrated where it could be better controlled. The batteries would normally be charged during the night, when power system loads are at a minimum, thus further improving the efficiencies of the electric power system operations. The Commission recognized the electric battery research support by Edison Electric Institute, but concluded that the present scale of the effort is not likely to result in rapid progress. Since enactment of the 1965 Clean Air Amendment (P.L. 89-272, 79 Stat. 992), the Administration has proposed a modest initial appropriation for 1967 to the Department of Health, Education and Welfare of one hundred thousand dollars for planning research to explore alternatives to the internal combustion gasoline engine, particularly in the area of fuel cells and battery-operated vehicles. See the President's 1967 Budget Message (H. Doc. No. 335), Vol. 112 *Cong. Rec.* (January 24, 1966), p. 857, 862; House Appropriations Subcommittee Hearings, 89th Cong., 2d Sess., Part 3, pp. 559-560. We strongly urge that any further plans for undertaking and financing air pollution research programs provide for intensified research and development of rechargeable storage batteries and fuel cells suitable for widespread use in motor vehicles as an appropriate measure for aiding in the solution of the acute automotive air pollution problems now confronting our large metropolitan areas. More active Federal support and leadership in this important field, in our opinion, would tend to stimulate non-governmental research efforts and give added incentive to the industries concerned to carry forward developmental work along these lines.

While the Commission recognizes the importance of appropriate measures to further air pollution control, we offer no comments on the merits of the amendments proposed in H.R. 13199 and their fiscal aspects, except to suggest that serious consideration be given to the adequacy of authorizations for research and development of electrified mass transportation media and of rechargeable storage batteries and fuel cells for motor vehicular use, in addition to the funding of traditional air pollution research areas.

---

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., April 5, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: This is in reference to your letter of March 7, 1966, requesting our comments on H.R. 13199, a bill to amend the Clean Air Act.

We have no special information concerning the subject matter of the bill and therefore have no recommendations as to the merits of the proposal.

It is noted that section 3(a)(1) of the bill has an erroneous citation. The reference to "33 U.S.C. 1857c(a)" should be "42 U.S.C. 1857c(a)."

Sincerely yours,

FRANK H. WEITZEL,  
*Assistant Comptroller General of the United States.*

---

GENERAL SERVICES ADMINISTRATION,  
Washington, D.C., April 16, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of March 7, 1966, requested such comments as the General Services Administration may desire to make on H.R. 13199, 89th

Congress, a bill "To amend the Clean Air Act so as to authorize grants to air pollution control agencies for maintenance of air pollution control programs in addition to present authority for grants to develop, establish, or improve such programs; make the use of appropriations under the Act more flexible by consolidating the appropriation authorizations under the Act and deleting the provision limiting the total of grants for support of air pollution control programs to 20 per centum of the total appropriation for any year; extend the duration of the programs authorized by the Act; and for other purposes."

The purpose of the bill is stated in the title.

Inasmuch as the proposed legislation would not affect the functions and responsibilities of GSA, we have no comment to make as to the desirability of the enactment of H.R. 13199.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, Jr.,  
*Administrator.*

Mr. JARMAN. The first witness this morning is our colleague from Michigan, Hon. Weston E. Vivian. Mr. Vivian, we will be glad to hear you at this time.

**STATEMENT OF HON. WESTON E. VIVIAN, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MICHIGAN**

Mr. VIVIAN. Mr. Chairman, I am very interested in H.R. 17101, a bill which will strengthen and continue the effort for a cleaner atmosphere. As I believe you are aware, I have submitted bill H.R. 16368, a companion bill. I appreciate the opportunity to testify this morning and I urge the approval of this legislation. Before I begin, let me commend the pioneering work of your committee on abatement of air pollution, especially the constructive way in which you have fostered the program already under way under Public Law 84-159.

Several months ago, the Subcommittee on Science, Research, and Development, of which I am a member, of the Committee on Science and Astronautics, initiated a series of hearings to determine the adequacy of current technology for pollution abatement. A report is being prepared which will detail our findings, but I want to bring to your consideration at this time several personal observations from these hearings which should be of interest in connection with H.R. 17101.

At least three critical problems deserving increased attention were evident in our brief review of air pollution.

First, we heard that even if we adopt and put into full use the most advanced methods of eliminating pollutants from the exhaust gases of internal combustion engines, nevertheless, by 1980, we will still suffer from a smog level equal to today's level in our most troubled cities. The automobile "population explosion" will be great enough to simply wipe out the gains made in each individual car.

We must begin now to develop an alternative means of propulsion for personal transportation devices. Fuel cells, novel gas turbines, and batteries all offer promise.

Second, the enormous quantities of sulfur oxides emitted from the stacks of fossil fuel powerplants constitute a continuing threat in many urban areas. When mixed in stagnant air with dispersed dust particles, sulfur dioxide can hasten the death of the ill, the weak and

the old, and bring breathing discomfort to many others. The Donora, Pa. and London, England disasters remind us of the grave, potential hazard posed. Because our supplies of low sulfur content coals are small and costly to mine, and because our demand for fossil fuels rises year by year, it is essential that we find ways either to remove sulfur from the available fuels, or to remove the sulfur oxides from the stack gases. Every gas cleaning process tried so far has been quite costly. More research should be stimulated. Furthermore, our local, State, and National agencies need more definite information on what maximum concentration of sulfur dioxide is allowable in air in populous areas, so that meaningful air quality standards can be set to guide enforcement actions.

Finally, year by year, the carbon dioxide content of the earth's atmosphere appears to have increased, even though slightly, as we have increased combustion of carbon fuels worldwide. Is this continuing increase of consequence? A number of competent scientists believe that the "greenhouse" atmosphere warming effect supposedly produced by the increasing carbon dioxide content is very alarming. Are they right? What are the remedies? Immediate worldwide conversion to nuclear power? What hazards does that pose? Decisions in this field of enormous consequence may face the coming generation. Let us help them by accumulating the facts now that will be needed for any competent decisions.

Mr. Chairman, a number of other areas of needed research in air pollution were uncovered in our review, and I am sure your careful questioning of expert witnesses may have revealed many more. It appears to be sad, but true, that our great urban areas may never again have really clean air. But with your efforts they can at least look forward to no further worsening of the situation, and hopefully, at least somewhat, cleaner air. Without further and timely research on this question, however, the days of the future may be literally, as well as figuratively, dark indeed.

Mr. JARMAN. Are there any questions? If not, we thank you for your appearance, Mr. Vivian.

Mr. VIVIAN. Thank you, Mr. Chairman.

Mr. JARMAN. Our next witness will be Mr. Gerald H. Kops, supervisor, Milwaukee County Courthouse.

**STATEMENT OF GERALD H. KOPS, SECOND VICE CHAIRMAN, MILWAUKEE COUNTY BOARD OF SUPERVISORS; AND FRED R. REHM, DEPUTY DIRECTOR, DEPARTMENT OF AIR POLLUTION CONTROL, COUNTY OF MILWAUKEE, WIS.**

Mr. Kops. Mr. Chairman and members of the committee, my name is Gerald H. Kops, and I am second vice chairman of the Milwaukee County Board of Supervisors, and chairman of the legislative committee of that board.

I wish to thank you for the opportunity to appear at your hearing today and I would like to introduce you to Mr. Fred R. Rehm, the deputy director of Milwaukee County's Department of Air Pollution Control and our technical expert in the matters of air pollution.

Mr. Rehm is a graduate, registered professional chemical engineer who has published many technical articles in this field. Mr. Rehm



has held chairmanships of numerous committees of the Air Pollution Control Association, the American Society of Mechanical Engineers, the American Public Works Association and many other technical societies.

At the present time, he serves as an incineration consultant to the National Academy of Sciences and as a radiological consultant to the Department of Defense for whom he has directed various fallout projects at five of the Nevada atomic test series.

He has been asked by the U.S. Public Health Service to appear on the program of the 1966 National Air Pollution Conference in Washington in December. Mr. Rehm will present a statement representing the views of the Milwaukee County Board of Supervisors concerning bill H.R. 13199.

Thank you very much, Mr. Rehm.

MR. REHM. Mr. Chairman and members of the committee, my name is Fred R. Rehm, and I am deputy director of Milwaukee County's Department of Air Pollution Control. I wish to thank the committee for the opportunity to appear here today and to present the views of the Milwaukee County Board of Supervisors with regard to H.R. 13199—the 1966 Amendments to the Clean Air Act.

Milwaukee County initiated one of the first countywide, or regional, air pollution control programs in this country in June 1948. A full-time, well-staffed, air pollution control program has been underway in this community since that time.

You will note that Milwaukee County, therefore, preceded the Federal Government into the air pollution control field by 7 years and that we preceded even much troubled Los Angeles County in this effort.

A city of Milwaukee smoke and air pollution control program had been in effect in this area since 1904, and was one of the first such programs in any major city of this country. I would be remiss if I did not point out that Milwaukee County has taken significant steps and has made considerable progress in its program to clean the air of this community. We have operated a well-equipped laboratory for 16 years and are one of the pioneer air pollution control agencies in the measurement of air pollution emissions at the source—the effective and logical point for controls.

We have devoted full-time, effective attention to our multitude of stationary sources of air pollution and have also devoted due attention to our motive power sources (autos, trucks, buses, trains) and to the many marine sources that are frequent visitors to our excellent port facilities.

It is not my intention to take this committee's valuable time to detail for you the progress in Milwaukee County's active air pollution control program. To do so would be an affront on this committee; however, the above brief account of this background will be helpful to you to understand our present position with respect to H.R. 13199.

By the same token that we admit to considerable progress in our efforts to date, we are the first to admit that a great deal more must be done to cope with this rapidly evolving field as man is compelled to learn to live with, and to control, his ever-increasing aerial wastes.

To this end, the Milwaukee County Board of Supervisors at its meeting of September 15, 1966, unanimously approved a 10-point 5-year plan and objectives for its air pollution control program which

when implemented will continue Milwaukee County in the forefront of those major cities seeking and finding workable solutions to this growing problem.

With the support of Milwaukee County, the State of Wisconsin was one of the first States in the Nation to enact favorable income and property tax concessions for the installation of air pollution control facilities. Such legislation has been in effect since 1953 and was again modified to be effective August 1, 1966, to provide the most liberal tax considerations for air pollution control facilities in the Nation.

I will not burden this committee with details of our 5-year plan and objectives, nor of the newest Wisconsin tax benefits. Instead, I have appended a copy of both of the documents detailing these two items to my prepared statement for inclusion in the record, if the committee so chooses.

Mr. JARMAN. They will be received.

(The information referred to follows:)

COUNTY OF MILWAUKEE DEPARTMENT OF AIR POLLUTION CONTROL TENTATIVE  
5-YEAR PLAN AND OBJECTIVES

1. CONDUCT AN AIR QUALITY MONITORING AND ASSESSMENT PROGRAM

In November, 1965 an application was filed for a Federal grant under the Clean Air Act (Public Law 88-206) to conduct an air quality monitoring program. In this project, a comprehensive study is planned to assess the extent and trends of the *gas and suspended particulate matter phase* of the air pollution problem of this community. Twenty-four-hour-per-day, seven-day-a-week studies will be made of the concentration of some of the more serious air pollutants—SO<sub>2</sub>, NO<sub>x</sub>, O<sub>3</sub>, HC, CO, and suspended particulates—at 5 or 6 different locations over a two- to three-year period. As a result of the initial study, this project may lead the Department to—

(a) An extension of the continuous monitoring program for a number of years for any one, or more, of the above pollutants where concentrations of these pollutants are measured that approach a serious level.

(b) The initiation of a source emission inventory of any one, or more, of these pollutants found to exist in concentration levels considered to be approaching serious proportions.

(c) Establish the effect on pollutant concentrations of local meteorological and topographical conditions—for example, the effect of Lake Michigan's on-shore and off-shore breezes on pollution buildup, the effect of southerly winds bringing Chicago area pollution to add to our own emission sources, etc.

(d) Make recommendations for legislation to establish source emission limitations for any, or all, pollutants reaching serious concentration levels.

**Status**

1. We have been notified that we will shortly receive an approval Certificate from the U.S. Public Health Service that we have qualified for the U.S. grant and that we can proceed as per our project application by advancing local funds until U.S. funding is received (\$12,978 for each of three years). Preliminary work on this project has been initiated.

**Needed to implement**

1. It is becoming increasingly evident that the Department will need the services of a skilled equipment and laboratory technician to service, maintain and operate the growing amount of scientific equipment acquired by the Department to operate effectively and efficiently in this field. To ignore this need will mean the dilution and diversion of our limited professional, technical resources from the important stack testing program. Such a need will probably be more definitely established after the first year of study under this grant. It is believed that the U.S. funds can be diverted to cover three-fourths the cost of this new position under our grant. This man will be used in data analysis and evaluation of the monitoring study and in the upkeep and servicing of the

\$22,000 of electronic laboratory and field test equipment the Department *presently* has on hand and the approximately \$8,000 of new equipment that will be acquired under this project. Estimated cost—\$9,500/year.

**2. ESTABLISH A CONTINUING TRAINING AND PUBLIC INFORMATION PROGRAM**

The Department has been delegated the responsibility by law to—

Publish and disseminate information on air pollution reduction and control and to enlist the cooperation of civic, technical, scientific and educational societies.

With the growing public awareness and the rapid technological developments in the air pollution field, there is a rapidly developing need for the Department to establish an organized training and public information program. The need exists at present for the Department to—

(a) Organize, develop, and conduct technical training courses for the following categories of people:

- (1) Industrial Plant Engineers.
- (2) Architects and Consultants.
- (3) Heating, Sheet Metal and Ventilation Contractors.
- (4) Operating Engineers and Firemen.
- (5) Incinerator Contractors.
- (6) Inservice Training for Department Inspectors.

(b) Publish periodically a news or information piece aimed at the general public to acquaint them with the Department's efforts, programs and developments in this field.

(c) Augment and expand the publication of its technical reports on specific air pollution problems and solutions.

(d) Assist in fulfilling the increasing number of requests for public, civic and technical society speaking engagements.

***Needed to implement***

1. The need for a technically oriented training and public information man has been established to carry out all four of these functions. A position having these duties and responsibilities should be sought immediately.

Estimated Cost—\$9,000/year.

**3. CONTINUE THE DEVELOPMENT AND ENACTMENT OF COMPREHENSIVE RULES AND REGULATIONS GOVERNING NEW NONCOMBUSTION PROCESS INSTALLATIONS**

The Advisory Board, aided by the Department's staff, has undertaken the development of comprehensive Rules and Regulations governing all *New Installations* capable of adding air pollutants to the community's atmosphere. Upon development of proposed Rules and Regulations, the Advisory Board has assisted the Department in seeking favorable action by the County Board on its recommendations. To date, comprehensive Rules and Regulations and Permitting programs to have been adopted for New Combustion Process and Incinerator Installations. The following general areas require similar treatment, it is felt, and in this approximate order of importance relative to the contribution of these processes to the community's air pollution:

- (a) Metallurgical Processes.
- (b) Construction Industry Processes.
- (c) Driers, Kilns, Oven Processes.
- (d) Organic Solvent Processes.
- (e) Grain Processes.

***Status***

1. Rules and Regulations and Permitting programs have been established and adopted for New Combustion and Incinerator Installations within the past 1½ years and 6 months, respectively. No new staff was added to implement these programs.

2. The research, industry contact, development, writing and legislative guidance in the realization of the earlier programs have largely been as the almost exclusive effort of the Department's Deputy Director. It is expected that this same employee will carry the basic work load in all future efforts to establish a sound and reasonable technical legislative program in the remaining fields. It is expected that the time table involved here to completely establish a Permitting program covering all of these new process installations will extend beyond a

5-year period under the current method of approach because of the extensive time demands involved in developing such a comprehensive Legislative program which then in each case must be implemented by the establishment of a working Permitting and Inspection Program. The implementation of this program will require a second source test team consisting of a Test Engineer and Test Engineering Aide. Even as of now, the present single source test team is falling badly behind as they are being diverted to other assignments (general air quality monitoring, specific area studies, augmenting the incineration permitting program, etc.).

*Needed to implement*

1. There is a definite need established by the present permitting system (Combustion Process, Incinerators) for a Supervisory Inspector position to be established from a promotional examination from our Inspector specialist ranks. As soon as Rules and Regulations and a Permitting system are established in the Non-Combustion process field, the need for this position will be urgent. Estimated Cost—\$9,500/year.

2. A need is rapidly becoming evident for a second source test team as the Permitting program is expanded to the Non-Combustion process field. This will entail the addition of two men for this function (Test Engineer, Test Engineering Aide). Estimated Cost—\$15,000/year.

**4. ESTABLISH A COUNTYWIDE LICENSING PROGRAM FOR HEATING AND VENTILATION CONTRACTORS, OPERATING ENGINEERS AND FIREMEN, AND INCINERATOR CONTRACTORS AND SUPPLIERS**

At the request and initiation of the Heating, Ventilation and Sheet Metal Contractors, and their affiliated Labor organizations, legislation was enacted (which became effective in November, 1965) permitting Milwaukee County to license Heating and Air Conditioning Contractors. It is felt that such a program, if initiated, should logically be administered by this Department as it is currently in regular contact with this segment of our local industry in its present permitting program covering the combustion fields.

It is also felt that a County-wide licensing program covering Operating Engineers and Firemen is needed to strengthen the control of air pollution caused by operating personnel. At present, only a City of Milwaukee licensing program of these groups is in effect. Outside the City of Milwaukee, there are no uniform requirements for personnel operating heating and power equipment, all of which are potential sources of serious air pollution emissions.

*Needed to implement*

1. The development of a suitable Milwaukee County Ordinance under Statute Section 59.07 (59) Heating and Air Conditioning Contractors, should be undertaken and enacted to implement this program. The industry and labor groups involved have met with the Department and have indicated in informal talks that this Department (they feel) is the logical one to administer this program which is aimed at upgrading the industry, as well as the air pollution problem. Enactment of this legislation will require the addition of one man and secretarial help to administer this program. Estimated Cost—\$11,000/year.

2. State legislation and a County Ordinance will be required to permit Milwaukee County to establish a County-wide licensing program covering Operating Engineers and Firemen. Such a program should be patterned after, and be an extension of, the present successful City of Milwaukee program—but should cover all of Milwaukee County. The Labor organizations involved have unsuccessfully tried to establish a State-wide licensing program of these skills. A County-wide program would be an acceptable intermediate step to these groups, as well as providing an effective tool in the control of air pollution caused by irresponsible operation of equipment capable of emitting air pollutants. It is expected that the same employees handling the Heating and Ventilation Contractors licensing program could be utilized in the conduct of this program. The training and public information division would augment these efforts.

**5. SEEK CLEARER AND EXPANDED LEGISLATIVE AUTHORITY IN THE ODOR CONTROL FIELD**

At the present time, the Department's statutory authority in this field needs clarification and expansion to permit control actions in this important phase of the community's air pollution problem. Odor problems are becoming an in-

creasing factor in the total air pollution control problem and require attention initially at the legislative level.

**6. EXPLORE THE POSSIBILITY FOR PROVIDING A REGIONAL AIR POLLUTION CONTROL PROGRAM THROUGH THE SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION**

It is becoming increasingly evident that a regional approach to air pollution control may be needed covering the counties abutting Milwaukee County, along with Milwaukee County. Since air pollutants do not respect political boundaries, and the concentrations are instead governed by natural air basins, it would appear proper to give some consideration and planning to a Regional approach to its control. Precedence for such approach has been established in other areas—such as San Francisco Bay Area where 5 or 6 counties have set up a single unified control program governing all units. Because of the present great urbanization trends in the former rural areas of contiguous counties, it will be necessary that they establish some form of air pollution control programs less our local effective efforts are negated by inattention to this problem by counties “upwind” of Milwaukee County.

*Needed to implement*

A possible approach to be considered in studying this proposal is—

Expansion of Milwaukee County's program to cover this air basin and urbanized areas. Such a study might best be made by the Southeastern Wisconsin Regional Planning Commission. This approach could be implemented by providing air pollution control services to municipalities in neighboring counties and communities by Milwaukee County on a contract basis.

To implement a program of this type, much study is needed, and Statutory authority will be required.

**7. INITIATE A PROGRAM LEADING TO THE GRADUAL IMPROVEMENT OR ELIMINATION OF “FLUE-FED” INCINERATORS IN MULTISTORY BUILDINGS IN MILWAUKEE COUNTY**

In their present state, most existing flue-fed incinerators are major contributors to air pollution (soot, char and odors) in the downtown, apartment house and commercial business districts of this and most large urban areas. Within the past year, the National Academy of Sciences (after a careful study of this problem) has recommended that this type of incinerator be prohibited in new construction unless it incorporates many air pollution control features—the principal feature being a wet scrubber unit. This same report suggests methods for upgrading existing units of this type—this also incorporates adding scrubbers prior to the discharge of these units to the atmosphere. The report also recommends discontinuance or abolishment of the operation of these units, if such improvements are not incorporated after a specified period of time depending on local considerations. These type installations, we know, are the principal sources of air pollution in the above-described districts. It is felt that the location and performance evaluation of all such units be initiated promptly by Department personnel and a “phasing out or upgrading” program be established in the hundreds, and possibly thousands, of such existing units being used in Milwaukee County.

*Needed to implement*

1. The initiation of a location and evaluation survey by Department personnel.

2. The development and enactment of suitable local legislation to deal with this problem.

It is felt that the legislation establishing time limits under such a program should await initiation and implementation of a County-wide Refuse Disposal Program. Additional personnel needs cannot be estimated at this time until details of such a program are developed.

**8. COMMENCE A STRONG ENFORCEMENT PROGRAM AGAINST OPEN FIRE OR BARREL-TYPE BURNING OF GARBAGE, TREES, AND DEMOLITION MATERIAL IN MILWAUKEE COUNTY**

Once a County-wide Refuse Disposal Program is implemented, it is planned to initiate a strong enforcement program aimed at the open fire and back-yard burning of garbage as is being practiced at present in large areas in certain sections of Milwaukee County. This practice is a major contributor to the community's air pollution problem. Also, it is intended that a strong enforce-

ment effort will be directed toward public and private burning of trees, brush and demolition debris. The County-wide Refuse Disposal Program will be designed to provide suitable facilities to burn these materials with little or no air pollution. Enforcement must await and follow the realization of these facilities.

**9. REVIEW OF EXISTING EMISSION LIMITATIONS WITH RESPECT TO COMPATIBILITY WITH AVAILABLE TECHNOLOGY**

A survey will show that Milwaukee County's air pollution emission limitations, while amended in 1962, are not compatible with technological advances in this field or to the technology of the emission source. These limitations should be reviewed thoroughly with the thought of making them commensurate with our growing needs and with the technology involved. The review should result in a study which will recommend to the County Board a feasible plan, and when adopted will properly reflect both the technological aspects of the emission source and the technological developments in the field of air pollution control.

**10. A THOROUGH STUDY AND REVIEW OF THE DEPARTMENT'S ORGANIZATIONAL AND SALARY SCHEDULES SHOULD BE PERFORMED**

It can be definitely demonstrated that salary schedules for all positions in this growing and important field have lagged far behind other areas in this country. This is particularly true at the higher echelons of the Departmental staffing. There is a national shortage of trained technical, administrative, supervisory and inspectional personnel in this rapidly evolving field. Salary schedules locally have not begun to keep pace with this worsening condition as more and more cities, counties, states and the Federal government initiate and expand their air pollution control activities. The increased governmental attention to this problem has caused industry to enter and seek top qualified personnel in this field to stay ahead and abreast of these governmental efforts. This has further contributed to the shortage of qualified engineer-administrators, scientists and technicians. A thorough re-evaluation of the Department's organization and salary schedule is in order to prevent loss of our top qualified people to other groups. At the top levels, salary schedules are as much as 50% to 70% higher in other communities as compared to present Milwaukee County levels.

**WISCONSIN STATUTES PERTAINING TO PROPERTY TAXES, INCOME TAXES, AND AIR POLLUTION ABATEMENT INSTALLATIONS (EFFECTIVE AUGUST 1, 1966)**

**70.11 Property Exempted From Taxation.** The property described in this section is exempted from general property taxes:

**(21) Treatment Plant and Pollution Abatement Equipment; Lagoon Lands.**

(a) All property purchased, constructed, installed and operated with the approval of the committee on water pollution, state board of health, a city council, a village board or county board pursuant to s. 59.07 (53) or (85) for the purpose of abating or eliminating pollution of the air, and all property purchased, constructed, installed and operated with the approval of the department of resource development for the purposes of abating or eliminating pollution of the waters of the state.

(b) A prerequisite to exemption under this subsection shall be the requirement of filing an annual calendar year operating statement on such pollution elimination or abatement property with the department of taxation on or before April 1 of each year.

(c) In computing operating costs, taxpayers that have elected amortization deduction under s. 71.04 (2b) shall claim such accelerated amortization as a deduction in the annual operating statement required to be filed under par. (b). Once a property, covered by this subsection, has been fully amortized or depreciated and amortized no further deduction shall be allowed under this subsection in the computation of gain or loss from operating such pollution abatement properties. No loss from operation in a previous year shall be allowed under this subsection as a carry-forward adjustment to the current year's operating statement required hereunder.

(d) The books and records of owners of property covered by this subsection shall be open to examination by representatives of the department of resource development, state board of health and department of taxation.

**71.04 Deductions from Gross Income of Corporations.** Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions:

(2b) In lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1962, the owner may elect the write off of the balance not previously deducted in years prior to the 1966 calendar year or corresponding fiscal year for waste treatment plant and pollution abatement equipment purchased or constructed and installed pursuant to order or recommendation of the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (53) or (85) in the 1966 calendar year or corresponding fiscal year. Any waste treatment plant and pollution abatement equipment purchased or constructed and installed in the 1966 calendar year or corresponding fiscal year, or in a subsequent year, pursuant to order or recommendation of the committee on water pollution, department of resource development, state board of health, city council, village board or county board pursuant to s. 59.07 (53) or (85) may be deducted in the year of cash disbursement for same.

(a) Written notice of election to take amortization of any treatment plant and pollution abatement equipment under this subsection must be filed with the department of taxation on or before the filing date of the return for the first taxable year for which such election under this subsection is made in respect to such plant and equipment. Such notice shall be given on such forms and in such manner as the department of taxation may by rule prescribe.

(b) The taxpayer shall file with the department of taxation at the time of his election under this subsection copies of recommendations, orders and approvals issued by the department of resource development, state board of health, city council, village board or county board pursuant to s. 59.07 (53) or (85) in respect to such treatment plant and pollution abatement equipment, and such other documents and data relating thereto as the department by rule requires.

(c) No deduction shall be allowed under this subsection on other than depreciable property, except that where wastes are disposed of through a lagoon process such lagooning costs and the cost of land containing such lagoons shall be subject to the accelerated amortization provided for under this subsection.

(d) In no event shall accelerated amortization, or depreciation and accelerated amortization deductions be permitted in excess of the cost of the asset subject to the provisions of this subsection.

**71.05 Modifications, Transitional Adjustments and Election of Deductions for Natural Persons and Fiduciaries.**

(1) Modifications. (b) Subtract, to the extent included in federal taxable or adjusted gross income:

5. In lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1962, the owner may elect the write off of the balance not previously deducted in years prior to the 1966 calendar year or corresponding fiscal year for waste treatment plant and pollution abatement equipment purchased or constructed and installed pursuant to order or recommendation of the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (53) or (85) in the 1966 calendar year or corresponding fiscal year. Any waste treatment plant and pollution abatement equipment purchased or constructed and installed in the 1966 calendar year or corresponding fiscal year, or in a subsequent year, pursuant to order or recommendation of the committee on water pollution, department of resource development, state board of health, city council, village board or county board pursuant to s. 59.07 (53) or (85) may be deducted in the year of cash disbursement for same.

(a) Written notice of election to take amortization of any treatment plant and pollution abatement equipment under this subdivision must be filed with the department of taxation on or before the filing date of the return for the first taxable year for which such election under this subdivision is made in respect to such plant and equipment. Such notice shall be given on such forms and in such manner as the department by rule prescribes.

(b) The taxpayer shall file with the department at the time of his election under this subdivision copies of recommendations, orders and approvals issued by the department of resource development, state board of health, city council,

village board or county board pursuant to a 50.07 (53) or (56) in respect to such treatment plant and pollution abatement equipment, and such other documents and data relating thereto as the department by rule requires.

(c) No deduction shall be allowed under this subdivision on other than depreciable property, except that where wastes are disposed of through a lagoon process such lagooning costs and the cost of land containing such lagoons shall be subject to the accelerated amortization provided for under this subdivision.

(d) In no event shall accelerated amortization, or depreciation and accelerated amortization deductions be permitted in excess of the cost of the asset subject to this subdivision.

Mr. REHM. Milwaukee County welcomed the advent of the Federal Government into the field of air pollution in 1955. We have since witnessed the growth of the Federal air pollution program from the original areas of research and training to the present program which includes, in addition to the original areas, enforcement authority, the establishment of air quality criteria and the provision for making grants to State and local air pollution control agencies.

We have been in close touch with all areas of Federal activity both as they affect our local program and because of our demonstrated interest and concern in these matters. At the time of the enactment of Public Law 88-206, the Clean Air Act, we were in close touch with the congressional hearings on this proposed legislation.

In 1963, the Milwaukee County Board took a position supporting H.R. 6518, which was the principal House bill which formed the basis for the Clean Air Act. We were very pleased particularly with section 104—grants for support of air pollution control programs of H.R. 6518 which provided for grant support to establish and maintain programs for the prevention and control of air pollution.

You can imagine our dismay, then, when the conference committee report on the Clean Air Act adopted the amended Senate version of S. 432 as the basis for writing the final grant provisions of the Clean Air Act. In its present form, the Clean Air Act provides grant support only to develop, establish, or to improve air pollution control programs.

The Clean Air Act further provides that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for air pollution programs will be less than its expenditures were for such programs during the preceding fiscal year."

The net effect of the two eleventh hour changes to section 104 of Public Law 88-206 precluded Milwaukee County from receiving any substantial Federal grant support for its air pollution control program. Since Milwaukee County had acted in 1948 to establish an effective air pollution control program, its current level of activity precluded the need for any large-scale improvement in its program.

Similarly, it was true that the other 40 to 50 communities like Milwaukee County, that had developed advanced air pollution control programs prior to 1963 were precluded from benefitting to any extent from the Federal grant support program.

In effect, the Clean Air Act penalized those farsighted communities that had acted on their own initiative to deal with this problem to the advantage of those communities that had been laggard in this respect. Our Milwaukee County Board of Supervisors does not think that this is fair or proper, nor do they feel that this was the intent of the Congress.



The present Clean Air Act could actually promote the fragmentation of our countrywide air pollution control program by making our constituent municipalities eligible for virtual unlimited grant support to develop and establish air pollution control programs of their own, whereas limited grant support would be available to improve the more highly developed countywide program.

However, there appears to be no concerted effort in our community to do so at this time in view of the previous determination that this was a logical and desirable countywide function. Similarly, this is the case in other areas of the country where effective regional programs have been maintained.

This is in direct contradiction with the expressed intent of the Congress to encourage regional air pollution control efforts. It is our feeling, also, that an effective national air pollution control program at the State and local level, will require sustaining grants in addition to the stimulatory grant assistance provided by the Clean Air Act.

In H.R. 1319, we in Milwaukee County see constructive amendment of the Clean Air Act to overcome the major shortcomings and objections that we have detailed above. We also see in H.R. 1319, a progressive step forward in the Federal Government's program to develop cooperative Federal, State, regional, and local programs to prevent and control air pollution.

We would caution you, however, to seriously consider further amending section 104(b) of the Clean Air Act along the lines proposed in the statement of Mr. Vernon G. MacKenzie before the Special Subcommittee of Air and Water Pollution, U.S. Senate Committee on Public Works, on June 14, 1966.

In this statement, Mr. MacKenzie urged taking into consideration the local levels of nonrecurring costs of equipment or facilities acquisition and the conduct of special studies of air quality or specific types of air pollution sources in establishing the eligibility for Federal grant support.

We note that the U.S. Senate has taken cognizance of this recommendation in adopting an amended version of S. 3112 in July of this year. We feel that where the overall workability of the air pollution control program is not impaired, fluctuations in expenditures should not make agencies ineligible for Federal grant support.

On July 12, 1966, the Milwaukee County Board of Supervisors unanimously affirmed its support of H.R. 1319 and urges the enactment of this bill in an amended form that incorporates the recommendations of Mr. MacKenzie with regard to nonrecurring expenses. We are confident that this will prove to be a valuable step in meeting and dealing with the growing problem of community air pollution.

Thank you, Mr. Chairman.

Mr. JARMAN. Thank you, gentlemen, for being with us. The Chair will have just one question. With your full-time staffed air pollution control program in Milwaukee County, what amount of money goes into that program of yours?

Mr. REHM. We are budgeting at the rate of approximately \$200,000 a year, representing in the neighborhood of 20 cents per capita annually.

Mr. JARMAN. Is part of that Federal funds?

Mr. REHM. We have only received approximately \$13,000 of Federal grant support. It is because we are at the level of activity as I indi-

cated in our testimony that we have not been eligible for improvement support or we have not felt the need for additional improvement support.

Mr. JARMAN. So much of your activity and effort along this line goes back prior to the Federal entry?

Mr. REHM. Since we have been in it since 1945, we have accomplished a great deal and, therefore, the need is not as urgent as in other localities.

Mr. JARMAN. Thank you very much. Mr. O'Brien.

Mr. O'BRIEN. Is it your position that the way the law is now is tends to fragment the operations in the field; that it is an inducement to areas other than Milwaukee, for example, to reach out for this Federal money? Then they will do something that should be coordinated on a regional basis. Is that correct?

Mr. REHM. Yes, this is very possible and such a circumstance arose in the past year within our community.

Mr. O'BRIEN. You have only received \$13,000 in spite of the fact that you have been one of the foremost areas in this field?

Mr. REHM. This is all we have applied for, Congressman.

Mr. O'BRIEN. That is all you could apply for?

Mr. REHM. Reasonably, true.

Mr. O'BRIEN. I don't like to raise this point but it does seem to me in listening to your testimony that you feel that in a sense, the Senate is beginning to catch up with what the House wanted to do 3 years ago.

Mr. REHM. I think this is a very correct methods of stating our position.

Mr. O'BRIEN. We so seldom get top billing in Washington that I like to strain the point a little bit.

Mr. REHM. It is well taken, Congressman.

Mr. O'BRIEN. There is one other question I have here. Does the Senate bill this year dip into that question of maintenance which seems to be the core of your argument?

Mr. REHM. Yes, sir. We are in accord with the Senate adopted version in July.

Mr. O'BRIEN. Then in that particular area, if we were inclined to go along with the Senate, we would have no disagreement with you?

Mr. REHM. As you stated, this was your original contention and we will go along with you.

Mr. O'BRIEN. Thank you. I think that is a good point at which to quit, Mr. Chairman. I have no further questions.

Mr. JARMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. I think in your testimony you referred to the fact that in no case could a State cut back on its expenditures. If they qualify for Federal funds, they in turn would be expected to continue at the State level at the same level as they had previously done. You made some reference to that.

Mr. REHM. The present Clean Air Act has this requirement.

Mr. NELSEN. As I recall in the committee hearings, there was some fear expressed that if the Federal Government stepped into it that the State might back away from the activity as had been previously engaged in so that the net gain would be very little. We might step it up from national and they might cut back from State level, that that was the purpose.

Mr. REHM. I think in all good conscience in the adopted version satisfactory performance levels must be maintained and this will insure local participation at the State and local levels. I think this would overcome this particular objection. As stated in the amended and passed Senate version, I think this accomplishes this end.

In other words, we are not attempting to shift the cost of this totally to the Federal Government. As we have demonstrated in the past, we have all good intentions to maintain an active program in our area.

Mr. NELSEN. It seems to me that there is a wee bit of a tendency at the national level now to move more in the direction of making funds available to the various States in many programs and leaving more of the decision to the States as to where they think it can best be applied. There might be great merit to some flexibility in that direction.

Mr. REHM. We would welcome this and we see this developing attitude.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman. What are your major pollution problems in your area, would you say?

Mr. REHM. Up to the last few years, Congressman, our problem has been principally particulate or solid in nature. It stemmed principally from solid discharges. We are seeing and are experiencing a growing awareness of the need to deal more thoroughly with the gas phase pollutants, the things of common interest that have come to the fore naturally, sulfur dioxides and oxides of nitrogen, hydrocarbons—the gas phase pollutants.

Up to this time, our attention has been particularly directed to particulates or solids.

Mr. NELSEN. Will the gentleman yield? A friend of mine recently painted his house white and woke up in the morning and it was green. Would this be a gas of some kind?

Mr. REHM. Yes; it was probably hydrogen sulfide depending on the state of the green.

Mr. NELSEN. Thank you.

Mr. ROGERS of Florida. Do you have any guidelines that you use now for industry in your area?

Mr. REHM. Yes; very much so. We have had emission limitations in effect since 1948 and in 1962, we revised and strengthened these emission limitations. We have as part of our statement a copy of a 5-year plan enacted earlier this month which will further strengthen these emission limitations.

Mr. ROGERS of Florida. Could you submit for the record your limitations so that we could see those? Could you furnish the committee that.

Mr. REHM. I would be happy to do so.

(For information requested, see p. 83.)

Mr. ROGERS of Florida. In other words, do you have a monitoring system?

Mr. REHM. We have maintained in Milwaukee County, because of our principal interest in solids, a 70-station monitoring program since 1951 on a monthly basis.

Mr. ROGERS of Florida. Give us some examples of the solids.

Mr. REHM. This is dust, soot fall, things of this type. This program has been maintained since 1951 at between 60 to 70 stations.

In addition to this, we measure the suspended particulate matter in the air. We filter out solids and measure the suspended particulate matter. One the one grant that we have applied for, we are awaiting receipt of equipment, now on order, to measure and do more extensive gas phase monitoring which would include sulfur dioxide, hydrocarbons, ozone nad oxides of nitrogen on a continuous around-the-clock basis.

Mr. ROGERS of Florida. When it reaches a certain level, this activates your regulation and what happens?

Mr. REHM. No; we have not felt the need for the type of thing that Los Angeles has done. Fortunately, we are located from a topographical and meteorological standpoint in such a manner that we have benefited from our Lake Michigan breezes and the concentrations of gas phase pollutions or the photochemical smog have not built up to the point at which we feel that we need an alerting type system as Los Angeles has felt the need for.

Instead, our activities have been directed to limiting particulate emissions principally dust, fly ash, soot, and these sort of things from all types of emission sources, incinerators, powerplants, asphalt plants, et cetera, the whole gamut of stationary sources.

Mr. ROGERS of Florida. Have you any schedule where you require suspension of operations at all?

Mr. REHM. No, sir.

Mr. ROGERS of Florida. You have not had to get into that?

Mr. REHM. Fortunately, no.

Mr. ROGERS of Florida. Simply control methods to reduce?

Mr. REHM. Right.

Mr. ROGERS of Florida. And has this been successful?

Mr. REHM. We feel very much so in the particulate phase. We have made considerable progress.

Mr. ROGERS of Florida. What has been your progress?

Mr. REHM. There has been approximately a 50-percent reduction in the rate of deposits of solids in our area since the beginning of our program despite the fact that we have had rapid evolution and growth in industry in our area.

Mr. ROGERS of Florida. Is this still too high?

Mr. REHM. It is too high in certain locations, yes. We intend and hope to further decrease these levels.

Mr. ROGERS of Florida. In what period of time? Within your 5-year period?

Mr. REHM. We have set forth hopefully that we can bring these levels down to more tolerable levels within the 5-year program.

Mr. ROGERS of Florida. On the gas pollution, how do you stand there or do you know yet because you have not gotten your monitor?

Mr. REHM. We have done spot checking over the years and have, therefore, felt that this problem must await the areas of more principal interest which has been particulates, and this evaluation of our gas phase pollution problem was such that we felt no great urgency in view of our limited staff, and so forth, to get into this.

Now, just since June, when we have been doing some monitoring in this area, we noted that within this month of September 1966, that in our downtown area of Milwaukee County that we measured oxidant levels that on four occasions approached the eye irritation level and this was a great shock to us, to me particularly inasmuch as I have

not been completely convinced that this was a problem, at least not in our area.

Mr. ROGERS of Florida. Do you attribute this mostly to automobile exhaust or to what?

Mr. REHM. I would say at this point, because of the location where we made these measurements, yes, largely automobile contributions to a photochemical smog problem.

Mr. ROGERS of Florida. What about coal burning or oil burning? What effect does this have or have you made a determination?

Mr. REHM. We have not been able to monitor the sulfur dioxide emissions to any great extent and I think this would be their principal contribution to pollution, since we have largely controlled the fly ash emission problem from such sources.

Mr. ROGERS of Florida. If you find that so what would you do, put a limitation on?

Mr. REHM. We have not crossed that bridge yet but with the present state of the art, the only effective means of control at the present time would be to limit the sulfur content of the fuel as no economic solution has been developed to remove sulfur from the exhaust products.

Mr. ROGERS of Florida. Are there any present guidelines that could be used in this?

Mr. REHM. Of course, I think the pioneering effort in this area at the present time is that which has been set by New York City most recently.

Mr. ROGERS of Florida. Thank you very much. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Rehm, Mr. Kops, we appreciate your being with us to help make our record on this important subject.

Mr. REHM. Thank you, Mr. Chairman.

Mr. KOPS. Thank you, Mr. Chairman.

Mr. JARMAN. Our next witness is Dr. Richard A. Prindle, Chief, Bureau of State Services, U.S. Department of Health, Education, and Welfare and Vernon G. MacKenzie, Assistant Surgeon, Chief, Division of Air Pollution. It is nice to have you with us.

#### **STATEMENT OF DR. RICHARD A. PRINDLE, CHIEF, BUREAU OF STATE SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Dr. PRINDLE. In the interest of your time, I would like to submit my statement and excerpt certain passages.

Mr. JARMAN. Thank you, sir.

(Dr. Prindle's statement follows:)

#### **STATEMENT OF DR. RICHARD A. PRINDLE, CHIEF, BUREAU OF STATE SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to participate in these hearings on air pollution which will bear so significantly on the Nation's efforts to achieve a more healthful environment. No one who knows the history of our country can be unaware that we were very late in recognizing the need to preserve and protect the natural resources on which a wholesome human environment is so dependent. We have succeeded in creating the most technologically advanced and economically prosperous society in the history of mankind, and we have achieved unprecedented levels of agricultural and industrial productivity, but in accomplishing this, we indulged in what we

now regard as intolerable waste and destruction of our natural resources. There can be no doubt that we have derived immense benefit from our steadily increasing ability to alter the environment, but neither can there be any doubt that, through lack of foresight, we have also unnecessarily marred the face of our country.

It was not until late in the 19th Century that we began to see the vital connection between conservation of natural resources and protection of the public health and welfare. Moreover, our progress in understanding this relationship has been uneven. Our initial steps were concerned with the hazards inherent in some of the more flagrant abuses of our natural environment. There is now general agreement, for example, that, if we are to cut down many acres of forest each year, we must also plant new trees; that is, if we are to raise bumper crops on our farmland, we must also replenish the soil; and that, if we are to strip millions of tons of minerals from the surface of the earth, we must also heal the scars that such mining operations produce.

But in many other areas, and particularly with respect to contamination of such resources as air and water, we are only beginning to approach a full understanding of the connection between man's health and well-being and the quality of his environment. That we have been tardy in this area is not surprising, for environment contamination is generally a slow process, and some of the most important health and welfare hazards posed by such contamination are essentially subtle and insidious.

Our scientific knowledge and understanding of the ways in which we threaten ourselves by contaminating our national environment are still far from complete. This is not to say, however, that those who have seriously examined the problem are in doubt as to the existence of significant health and welfare hazards arising from the increasing contamination of the air we breathe.

In dealing with air pollution, we have just two choices basically. We can move energetically to curtail what is now a serious problem, or we can do less than is necessary and allow the problem to become critical, which, at our present pace of population increase and economic growth, would not take long. In dealing with other problems affecting the environment we have, with few exceptions, followed the latter course, and we know from experience that it is more costly, both in terms of human health and welfare and in terms of dollars.

If we were to neglect our limited air resource to the extent we have neglected other resources in the past, the consequences would be intolerable. We can treat polluted water before we drink it, but we must breathe the air, with its burden of pollution, as it comes to us.

The effects of air pollution are serious now. In economic losses alone, air pollution costs the country billions of dollars a year through injury to vegetation and livestock, corrosion and soiling of materials and structures, depression of property values, and interference with ground and air transportation.

Of even greater significance are the adverse effects of air pollution on human health. Here we must be concerned not just with the threat of severe air pollution episodes capable of causing acute illness and death, but also with the hazards of long-continued exposure to the levels of air pollution which are common in many American communities. A growing body of scientific evidence indicates that exposure to ordinary levels of air pollution adversely affects the health of many people and is associated with the occurrence and worsening of chronic respiratory diseases and with premature death.

Air pollution is related to increased mortality from cardiorespiratory disorders, increased susceptibility to respiratory disease, and interference with normal respiratory function. Specific diseases associated in one degree or another with air pollution are emphysema, chronic bronchitis, asthma, lung cancer, and non-specific respiratory infections (i.e., the common cold).

We must also face the fact that the problem of air pollution, which is already serious, is steadily growing and worsening. In this country, the trends of economic expansion, urban growth, technological progress, and increasing use of motor vehicles all tend toward increased pollution potential. Over one-half of our population now lives on less than one percent of the land area of the United States, and by 1970, it is expected that two-thirds of an even greater population will be concentrated in the same small area.

As our population grows and as personal income rises, so will there be increases in demands for goods and services, in needs for heat and power, and in the quantities of waste products to be disposed of. By the year 2000, for example, overall energy use in this country is expected to increase three-fold, and 80 percent of the increase will depend on the use of fossil fuels, the combustion of which is already a major factor in the air pollution problems faced by most communities.

There is, however, no good reason why these trends must be accompanied by a further deterioration of our atmosphere. We have available the technical means for preventing or minimizing the discharge of most types of contaminants by the use of control equipment or through such means as industrial process modification or fuel substitution. For a few other contaminants for which such procedures are not now available at socially acceptable costs, current research can be expected to make new tools available within a relatively short period in the future. Also, in recent years, there have been many indications of a fundamental change in the national response to the problem of air pollution—a change which is manifested in rising public demands for increased control efforts on the part of both government and industry.

The Clean Air Act of 1963 and the Clean Air Act Amendments of 1965 have given all levels of government greatly improved tools for the control of air pollution. Mr. Vernon MacKenzie, Chief of the Division of Air Pollution, will present a full description of the progress the Clean Air Act has made possible. I should like to comment very briefly on the significance of this legislation on the Nation's efforts to deal with air pollution.

The provisions of this Act have served us well. We have initiated several interstate abatement actions which will ultimately benefit millions of people; we have published standards which will bring all new automobiles under control during the 1968 model year; we have increased our research efforts and have made progress toward the control of sulfur oxides, oxidants and other gaseous pollutants which were once clearly beyond our reach; through the matching-grants provision of the Clean Air Act, State and local control programs have been able to increase their budgets by more than 65 percent nationally. The activities carried out under the Clean Air Act have, in very direct ways, stimulated all levels of government, industry, and the public to exert greater effort toward the control of air pollution sources.

It should be stressed that the Federal Government alone cannot do the job. State and local governments and the private sector must assume additional responsibilities in combating air pollution. And the public must be better informed as to the actual and potential hazards of pollution.

We are encouraged by the progress that we have made, but we have only begun to scratch the surface. The problem not only remains serious, it continues to grow at a faster rate than our efforts to cope with it.

Mr. MacKenzie will comment in some detail on S. 3112, which would expand the Federal authority to give financial assistance to State and local air pollution control agencies. Experience during the past two and one-half years has proved that the Clean Air Act indeed has the potential of producing a marked increase in the Nation's ability to deal with air pollution. We have moved a step forward but the step could be only temporary were it not for this bill which you now have under consideration.

Enactment of this legislation would permit the Department of Health, Education, and Welfare to expand and improve the financial assistance activities which have already been of considerable benefit to States and local governments. Moreover, it would insure the continued maintenance of State and local programs for the control of air pollution. It would authorize an increase of some \$9 million in our appropriation for the coming Fiscal Year and would extend the authorization for the Federal program. In short, Mr. Chairman, enactment of the bill will enable us to continue and augment the vital work we have begun under the Clean Air Act.

This country is in the first stages of the greatest effort it has ever made to improve the quality of those environmental resources so essential to our health and welfare. Our efforts are guided by the principle that every citizen, regardless of where he lives, is entitled to protection against such hazards as air pollution through enlightened governmental action, whether at the local, State, or national level, and through cooperation among government, industry, and the scientific community.

**Dr. PRINDLE.** I am pleased to have this opportunity to participate in these hearings on air pollution which will bear so significantly on the Nation's efforts to achieve a more healthful environment. We have had a long history in this country concerning the problems of national resources on which a wholesome human environment is so dependent.

It was not until late in the 19th century that we began to see the vital connection between conservation of natural resources and protec-

tion of the public health and welfare. Our progress in understanding this relationship has been uneven. Our initial steps were concerned with the hazards inherent in some of the more flagrant abuses of our natural environment.

With respect to contamination of such resources as air and water, we are only beginning to approach a full understanding of the connection between man's health and well-being and the quality of his environment.

That we have been tardy in this area is not surprising, for environmental contamination is generally a slow process, and some of the most important health and welfare hazards posed by such contamination are essentially subtle and insidious.

Our scientific knowledge and understanding of the ways in which we threaten ourselves by contaminating our natural environment are still far from complete. However, that is not to say that those who have seriously examined the problem are in doubt as to the existence of significant health and welfare hazards arising from the increasing contamination of the air we breathe.

In dealing with air pollution, we have had just two choices basically. We can move energetically to curtail what is now a serious problem, or we can do less than is necessary and allow the problem to become critical, which, at our present pace of population increase and economic growth, would not take long.

In dealing with other problems affecting the environment we have, with few exceptions, followed the latter course, and we know from experience that it is more costly, both in terms of human health and welfare and in terms of dollars.

The effects of air pollution are serious now. In terms of injury to vegetation and livestock, corrosion and soiling of material and structures, depression of property values, and interference with ground and air transportation.

But of even greater significance are the adverse effects of air pollution on human health. Here we must be concerned not just with the threat of severe air pollution episodes capable of causing acute illness and death, but also with the hazards of long-continued exposure to the levels of air pollution which are common in many American communities.

A growing body of scientific evidence indicates that exposure to ordinary levels of air pollution adversely affects the health of many people and is associated with the occurrence and worsening of chronic respiratory diseases and with premature death.

Air pollution is related to increased mortality from cardiorespiratory disorders, increased susceptibility to respiratory disease, and interference with normal respiratory function. Specific diseases associated in one degree or another with air pollution are emphysema, chronic bronchitis, asthma, lung cancer, and nonspecific respiratory infections, that is the common cold.

There is no good reason why the trend that we anticipate in the years to come as a result of our growing economy must be accompanied by the further deterioration of our atmosphere. We have available the technical means for preventing or minimizing the discharge of most types of contaminants by the use of control equipment or through such means as industrial process modification or fuel substitution.



For a few other contaminants for which such procedures are not now available at socially acceptable costs, current research can be expected to make new tools available within a relatively short period in the future.

There have also been many indications of a fundamental change in the national response to the problem of air pollution—a change which is manifested in rising public demands for increased control efforts on the part of both government and industry.

The Clean Air Act of 1963 and the Clean Air Act Amendments of 1965 have given all levels of government greatly improved tools for the control of air pollution. I should like to comment very briefly on the significance of this legislation on the Nation's efforts to deal with air pollution.

The provisions of this act have served us well. We have initiated several interstate abatement actions which will ultimately benefit millions of people; we have established standards which will bring all new automobiles under control during the 1968 model year; we have increased our research efforts and have made progress toward the control of sulfur oxides, oxidants, and other gaseous pollutants which were once clearly beyond our reach; and through the matching-grants provision of the Clean Air Act, State and local control programs have been able to increase their budgets by more than 65 percent nationally.

The activities carried out under the Clean Air Act have, in very direct ways, stimulated all levels of government, industry, and the public to exert greater effort toward the control of air pollution sources.

It should be stressed that the Federal Government alone cannot do the job. State and local governments and the private sector must assume additional responsibilities in combating air pollution. And the public must be better informed as to the actual and potential hazards of pollution.

Mr. MacKenzie will comment on S. 3112, and the House version thereof.

I would like to add that I feel that that enactment of this legislation would permit the Department of Health, Education, and Welfare to expand and improve the financial assistance activities which have already been of considerable benefit to States and local governments.

Moreover, it would insure the continued maintenance of State and local programs for the control of air pollution. It would authorize an increase of some \$9 million in our appropriation for fiscal year 1967 for the Federal program. In short, Mr. Chairman, enactment of the bill will enable us to continue and augment the vital work we have begun under the Clean Air Act.

Thank you. I would like to have Mr. MacKenzie give you a little detail about the progress of the program and I would be happy to answer your questions.

Mr. JARMAN. That would be fine.

**STATEMENT OF VERNON G. MacKENZIE, ASSISTANT SURGEON GENERAL, CHIEF, DIVISION OF AIR POLLUTION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Mr. MacKENZIE. Mr. Chairman and members of the subcommittee, in the interest of conserving your time, I also have a statement that I would like to submit for the record and to summarize very briefly here.

(Mr. MacKenzie's prepared statement follows:)

**STATEMENT OF VERNON G. MACKENZIE, ASSISTANT SURGEON GENERAL, CHIEF, DIVISION OF AIR POLLUTION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Mr. Chairman and members of the committee, the adoption of the Clean Air Act in December 1963 and the enactment of major amendments to it in October 1965 gave the Federal Government a mandate to provide leadership and assistance in the national effort to control air pollution. I am pleased to have an opportunity to review the progress of the Federal air pollution program under that legislation and to supplement Dr. Prindle's testimony on the bills you have under consideration.

In the two and one-half years since the adoption of the Clean Air Act, far-reaching changes have taken place in the air pollution activities of the Department of Health, Education, and Welfare—changes which constitute important steps toward the creation of a truly dynamic national program capable of meeting more effectively the threat of air pollution in all of the diverse ways in which it affects the lives and well being of the American people. I will discuss some of the ways in which the Department of Health, Education, and Welfare, for its part, has begun meeting its responsibilities under the Clean Air Act and the 1965 amendments.

One of the primary objectives of the Clean Air Act is to stimulate greatly increased air pollution control activity at the State and local levels of government. The Act reaffirmed the national policy that State and local governments have a basic responsibility for the prevention and control of community air pollution problems, and, for the first time, authorized awarding of Federal funds directly to State and local agencies to assist them in meeting that responsibility. Under provisions of the Clean Air Act, grants can be made for any of three purposes—the development of new air pollution control programs, the establishment of programs already authorized by local or State law, or the improvement of existing programs.

The response to this new Federal activity has indeed been heartening. Awards in Fiscal Years 1965 and 1966 totaled \$9.18 million, the full amount appropriated by the Congress; thus far in Fiscal 1967, from funds available under a Continuing Resolution of the Congress, we have made new awards totaling \$437,000. In all, grants have been made to 120 local, State, and regional agencies. In addition, we now have a backlog of 25 applications, totaling about \$500,000, from agencies which are eligible for awards but for which funds are not currently available.

In all parts of the country, State and local governments have chosen to inaugurate new or improve existing air pollution programs with the assistance from Federal grants. Totally, including both Federal and non-Federal spending, the funds available for State and local air pollution programs have increased by about 65 percent since the adoption of the Clean Air Act. On an annual basis, some \$20 million is now being invested in State and local regulatory programs—about \$5.1 million at the State level and about \$14.9 million at the local level. This amount of money is far from adequate, but it does compare favorably with the combined State and local spending of \$12.7 million in 1963.

Of the agencies that have received Federal grants under the Clean Air Act, 57 are developing new programs. Another 23 are establishing programs which had already been legally authorized but not activated. Thus, as a direct result of the Federal grants activity, efforts are now being made which, if fully successful, will bring a total of 80 new air pollution programs into being. In addition, 40 agencies have received grants to assist in the improvement of existing programs.

In short, the response of State and local agencies has been encouraging, but it is important to recognize that our work is only beginning. The fact is that a great many cities and States are still without the services of truly effective control programs. Although encouraging progress is being made, we still have a long way to go before State and local agencies will be adequately authorized and equipped to enforce regulations for the prevention and control of air pollution.

In brief, Mr. Chairman, there are still many serious deficiencies in State and local air pollution control efforts in nearly all parts of the country. To achieve a really significant degree of improvement will require a much greater effort in

the months and years ahead than has been made at any time in the past. A great deal of new local and State legislation will be needed. More trained manpower will be needed. Local and State agencies must not only redouble their efforts to prevent new air pollution problems from developing, but, at the same time, must begin dealing more effectively with the many obvious sources of air pollution which remain uncontrolled in virtually every city and town. Not least important, an increased investment of public funds will be needed to achieve and sustain the high level of control activity that is so clearly called for by our knowledge of the present and probable future dimensions of the air pollution problem.

In his testimony, Dr. Prindle emphasized that a share of the needed funds must come from the Federal Government. To provide this assistance, we recommend that the Congress give favorable consideration to the pending legislation, which would amend the Clean Air Act to authorize Federal financial assistance to control agencies on a continuing basis and remove the existing provision limiting the total of grants to air pollution control programs to 20 percent of our total annual budget. In our view, adoption of this legislation is essential to permit the Federal Government to continue to meet its national responsibility for helping State and local governments to cope with the mounting problem of air pollution.

Also, the Federal Government must be prepared to deal with serious air pollution problems which are inherently beyond the reach of State and local agencies. Air pollution affecting interstate areas is a prime example. Even where people living in such areas are able to insist on effective control of air pollution sources within their own communities, they are powerless to prevent pollution from reaching them from sources in another State. To provide a means of dealing with such situations, the Clean Air Act authorized Federal action to abate interstate air pollution problems.

Thus far, this new Federal authority has been invoked in nine interstate areas, including, most recently, the area in which our Nation's Capitol is located. In terms of the number of people affected, the most significant case concerns interstate air pollution in the metropolitan New York and northern New Jersey area. In two interstate areas, abatement action has been undertaken at the request of States affected by pollution originating outside their boundaries. The first such case involved pollution from a feed and fertilizer plant in eastern Maryland affecting people in Delaware. The second involved emissions from a pulp mill in northern New York affecting people in Vermont. In both instances, the Secretary has issued recommendations calling for prompt and effective control of the interstate problems. To assess the present and possible future need for additional Federal abatement action, we have begun technical surveillance activities in other interstate areas across the country.

In the 1965 Amendments to the Clean Air Act, major new authority was provided for Federal action to deal with one of the most important single factors in the contemporary air pollution problem—the growing problem of motor vehicle pollution. Under this authority for the establishment and enforcement of national standards, Secretary Gardner has issued standards which will apply to new gasoline-powered passenger cars and light trucks, including both American-made and imported vehicles, beginning with the 1968 model year. This means such motor vehicles must be equipped or designed to comply with Federal standards for the control of the two predominant sources of motor vehicle emissions—the exhaust tailpipe and the crankcase. The standards call for significant reductions in tailpipe emissions of hydrocarbons and carbon monoxide, as well as 100 percent control of crankcase emissions.

As new cars equipped to comply with the Federal standards replace older, uncontrolled cars, and as the standards are revised in accordance with improvements in control technology and in scientific knowledge of the harmful effects of motor vehicle pollution, we fully expect to see a significant reduction in this important national problem. But this does not provide a permanent solution to the problem. This important point was emphasized by Secretary Gardner in December 1965; "It is important to bear in mind," the Secretary said, "that with the increase in the number of automobiles projected for the remainder of this century, the pollution problem could become even more serious than it is today."

We estimate, Mr. Chairman, that by about 1980, motor vehicles will be so numerous that present approaches to controlling pollution from the internal combustion engine will be totally inadequate. If the public is to be protected against the threat of a steadily worsening motor vehicle pollution problem, new approaches to dealing with it must be found. Ultimately, if our present

dependence on motor vehicles for a major portion of our transportation needs continues, we will almost certainly need to develop virtually pollution-free power sources for motor vehicles.

The need to control emissions from diesel engines is an important aspect of the problem of motor vehicle pollution; indeed, from the standpoint of someone driving behind a diesel bus or truck, it may well seem the most important. I suspect that no other aspect of the problem makes so many people so indignant or so uncomfortable on so many occasions. The 1965 Amendments to the Clean Air Act provided authority under which the Secretary can establish national standards for the control of diesel emissions. A number of technical problems relating to the control of diesel emissions must be resolved before such standards can be established.

The functions of conducting and supporting research and training activities are an integral part of the Federal air pollution program under the provisions of the Clean Air Act and the 1965 amendments. In the past three years, we have expanded and accelerated our efforts in both of these important areas of activity.

In the area of research on the health hazards of air pollution, the early efforts of many scientists concerned with this problem produced a substantial body of evidence associating air pollution with illness and death from a number of respiratory diseases, including asthma, bronchitis, emphysema, and lung cancer. Though we are pursuing our investigations of the connection between air pollution and specific diseases, we are placing increasing emphasis on identifying and assessing the significance of earlier manifestations of the adverse effects of air pollution—such as changes in respiratory function that may be precursors of chronic disease.

In the area of technology for the control of air pollution, the knowledge and skills needed to control most major sources have been available for several years. Our present and projected future research efforts in this area relate principally to improving the effectiveness and reducing the cost of existing control methods. Of particular importance in this connection are the efforts we are making to accelerate the development of effective, low-cost methods of dealing with the problem of sulfur oxide pollution arising from fuel combustion. These efforts are described in detail in the report submitted to you on July 27, 1966, Mr. Chairman.

In the area of training activities, our efforts have been expanded three-fold, in terms of expenditures, since the adoption of the Clean Air Act. A major share of the increase has been directed toward helping to enlarge the supply of technical personnel qualified to work in the air pollution control field. We are currently supporting graduate training programs at 19 universities and providing aid to individual graduate students under a fellowship program. In addition, short-term training courses are conducted at the Taft Sanitary Engineering Center and in other locations, primarily to improve the technical competence of individuals already working in the air pollution field.

The major purpose of our training activities is, of course, to help meet the increasing manpower needs of local and State air pollution programs. The shortage of trained personnel is becoming a serious obstacle to the needed expansion of State and local control activities. For a variety of reasons, many State and local agencies are unable to recruit and retain personnel who have been trained under the auspices of the Federal Government. The result is that most of our trainees ultimately have been finding employment with industry or universities. We are currently seeking ways of channeling more of these people to State and local programs.

Technical assistance in dealing with specific air pollution problems is another area in which the needs of State and local agencies are increasing. Two types of activity account for most of our effort in this area. The first involves assistance to State and local governments in assessing their air pollution problems and planning control programs. Among the places where we are currently providing assistance for major projects are northwestern Indiana, the Washington, D.C. metropolitan area, the Kanawha Valley in West Virginia, and the City of Chicago; in addition, we provided extensive assistance for the major air pollution study just completed in the St. Louis metropolitan area—a comprehensive study that provides a sound basis for control action both in the city of St. Louis and in the surrounding areas of Missouri and Illinois.

The second major purpose of our technical services activity is to gather and publish reliable technical information on air pollution control problems associated with specific industries. This effort is intended primarily to assist State and local control officials in dealing with such problems, but it is, of course, of

direct benefit of the industries concerned. Work is now in progress on surveys of the pulp and paper industry, manufacturing of phosphoric acid and related phosphate fertilizers, and various segments of the chemical industry. A report on sulfuric acid manufacturing, one of the largest segments of the chemical industry, was issued several months ago. We expect to begin work next year on surveys of other industries.

The final item in my progress report on the Federal air pollution program concerns the control of air pollution at Federal installations. In the Clean Air Act, the Congress expressed its intent that Federal agencies should not contribute to community air pollution problems. To this end, the Clean Air Act called on all Federal agencies to cooperate with the Department of Health, Education, and Welfare in dealing with air pollution problems arising from their activities. In this connection, we have greatly increased our liaison with other Federal agencies and, in many cases, provided technical assistance in dealing with specific air pollution sources.

On several occasions, President Johnson has called on all Federal agencies to observe exemplary practices in the control of air pollution problems which their activities may create. An Executive Order embodying this directive has been issued. To implement it, Secretary Gardner has issued detailed instructions for the control of air pollution from Federal facilities. These instructions apply to new as well as existing facilities; their application should result in significant progress toward reducing the contribution with Federal activities make to the total problem of air pollution in American communities.

In summary, Mr. Chairman, our experience during the past two and one-half years has shown that the Clean Air Act can indeed produce a marked increase in the Nation's ability to deal with the mounting problem of air pollution. But we must not forget that we have only begun our work. In most communities, the air is no cleaner than it was two and one-half years ago; in many places, the burden of pollution has increased. And, as Dr. Prindle has emphasized, it threatens to increase still further in the years to come.

The bills you have under consideration, Mr. Chairman—specifically, H.R. 13199 and S. 3112—will enable the Federal Government to provide further help to cities and States which are trying to deal with their air pollution problems. A major feature of these bills is authority for awarding of Federal funds to State and local governments to help them meet the costs of maintaining effective control programs; this would be in addition to our existing authority to award grants to help in creating new programs or improving existing programs. The new grant authority, in our opinion, is necessary to carry out the Federal Government's obligation to help meet the national need for sustained local and State efforts to cope with the problem of air pollution. For this reason, we strongly recommend adoption of legislation authorizing maintenance grants to State and local air pollution control agencies.

To improve the workability of the grants program, we recommend amendment, as provided in S. 3112 as passed by the Senate, of that provision of Section 104(b) of the Clean Air Act which requires that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for air pollution programs will be less than its expenditures were for such programs during the preceding fiscal year." Over a period of years, Mr. Chairman, many factors may justifiably cause fluctuations in the level of expenditures necessary to maintain control programs. Examples include non-recurring costs of equipment of facilities acquisition and the conduct of special studies of air quality or specific types of air pollution sources. In view of these facts, we consider desirable the amendment of this section of the Act as provided in S. 3112 now pending before you.

Mr. Chairman, my final comment on the pending legislation relates to the authorizations for appropriations for the Federal air pollution program. The bills, in addition to extending the time of appropriation authority, would consolidate the appropriation authorizations contained in sections 209 and 306 of the Clean Air Act. In our judgment, such consolidation is highly desirable in order to insure that the administration of the regulatory program to control pollution from motor vehicles, under Title II of the Act, will not be impaired by unpredictable circumstances not anticipated nor provided for under a separate appropriation authorization for Title II. The flexibility provided by a consolidation of appropriation authorities is of considerable importance in assuring the ability of the Secretary to administer equitably Title II of the Act. While we would prefer an open-ended appropriation authority, as provided in H.R. 13199, a limitation in the amounts authorized for fiscal years 1968 and

1969, as provided in S. 3112, would be acceptable. However, if such limitations by fiscal year are to be incorporated, we recommend strongly that such appropriation ceilings not be made applicable to the authority for the construction of facilities under section 103(d) of the Act. Such non-recurring expenditures should not be permitted to interfere with the ability to carry out necessary functions under the Act.

Mr. Chairman, if you have any questions, we will be glad to try to answer them.

Mr. MACKENZIE. I am glad to have an opportunity to supplement Dr. Prindle's testimony on the bills that you have before you. The adoption of the Clean Air Act in December 1963, and the enactment of major amendments to it in October 1965 gave the Federal Government a mandate to provide leadership and assistance in the national effort to control air pollution.

In the 2½ years since the adoption of the Clean Air Act, far-reaching changes have taken place in the air pollution activities of the Department of Health, Education, and Welfare—changes which constitute important steps toward the creation of a truly dynamic national program capable of meeting more effectively the threat of air pollution in all of the diverse ways in which it affects the lives and well-being of the American people.

I would like to discuss just a few of the ways in which the Department of Health, Education, and Welfare, for its part, has begun meeting its responsibilities under the Clean Air Act.

One of the primary objectives of the Clean Air Act is to stimulate greatly increased air pollution control activity at the State and local levels of government. Under the provisions of the Clean Air Act, grants can be made for any of three purposes—the development of new air pollution control programs, the establishment of programs already authorized by local or State law, or the improvement of existing programs.

The response to this new Federal activity has indeed been heartening. In all parts of the country, State, and local governments have chosen to inaugurate new or improve existing air pollution programs with the assistance from Federal grants.

Totally, including both Federal and non-Federal spending, the funds available for State and local air pollution programs have increased by about 65 percent since the adoption of the Clean Air Act in 1963.

As a direct result of the Federal grants activity, efforts are now being made which, if fully successful, will bring a total of 80 new air pollution programs into being. In addition, 40 agencies have received grants to assist in the improvement of existing programs.

In short, the response of State and local agencies has been encouraging. But it is important to recognize that our work is only beginning. The fact is that a great many cities and States are still without the services of truly effective control programs.

Although encouraging progress is being made, we still have a long way to go before State and local agencies will be adequately authorized and equipped to enforce regulations for the prevention and control of air pollution.

In brief, Mr. Chairman, there are still many serious deficiencies in State and local air pollution control efforts in nearly all parts of the country. To achieve a really significant degree of improvement will require a much greater effort in the months and years ahead than has been made at any time in the past.

In his testimony, Dr. Prindle emphasized that a share of the needed funds must come from the Federal Government. To provide this assistance, we recommend that the Congress give favorable consideration to the pending legislation, which would amend the Clean Air Act to authorize Federal financial assistance to control agencies on a continuing basis and remove the existing provision limiting the total of grants to air pollution control programs to 20 percent of our total annual budget.

Mr. Chairman, in my prepared statement, I include some detail about progress which is being made in other elements of the Federal air pollution program relating to the control and abatement of interstate air pollution problems, the regulation of pollutant emissions from motor vehicles which will begin with the 1968 model year, and our research on the causes, effects, and control of air pollution and other activities under the Clean Air Act.

If I might summarize our experience, it is that during the past 2½ years, we have full evidence that the Clean Air Act can indeed produce a marked increase in the Nation's ability to deal with the mounting problem of air pollution. But we must not forget that we have only begun our work.

In most communities, the air is no cleaner than it was 2½ years ago; in many places, the burden of pollution has increased.

The bills you have under consideration, Mr. Chairman—more specifically, H.R. 13199 and S. 3112—will enable the Federal Government to provide further help to cities and States which are trying to deal with their air pollution problems.

A major feature of these bills would be the new authority for awarding of Federal funds to State and local governments to help them meet the costs of maintaining effective control programs; this would be in addition to our existing authority to award grants to help in creating new programs or improving existing programs.

The new grant authority, in our opinion, is necessary to carry out the Federal Government's obligation to help meet the national need for sustained local and State efforts to cope with the problems of air pollution. For this reason, we strongly recommend adoption of legislation authorizing maintenance grants to State and local air pollution control agencies.

To improve the workability of the grants program, we recommend amendment, as provided in S. 3112 as passed by the Senate, of that provision of section 104(b) of the Clean Air Act which requires that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for air pollution programs will be less than its expenditures were for such programs during the preceding fiscal year."

Over a period of years, Mr. Chairman, many factors may justifiably cause fluctuations in the level of expenditures necessary to maintain control programs. Examples include nonrecurring costs of equipment of facilities acquisition and the conduct of special studies of air quality or specific types of air pollution sources.

In view of these facts, we consider desirable the amendment of this section of the act as provided in S. 3112 now pending before you.

Mr. Chairman, my final comment on the pending legislation relates to the authorizations for appropriations for the Federal air pollution programs. The bills, in addition to extending the time of appropria-

tion authority, would consolidate the appropriation authorizations contained in sections 209 and 306 of the Clean Air Act.

In our judgment, such consolidation is highly desirable in order to insure that the administration of the regulatory program to control pollution from motor vehicles, under title II of the act, will not be impaired by unpredictable circumstances not anticipated nor provided for under a separate appropriation authorization for title II.

The flexibility provided by a consolidation of appropriation authorities is of considerable importance in assuring the ability of the Secretary to administer equitably title II of the act. While we would prefer an open-ended appropriation authority, as provided in H.R. 13199, a limitation in the amounts authorized for fiscal years 1968 and 1969, as provided in S. 3112, would be acceptable.

However, if such limitations by fiscal year are to be incorporated in the legislation, we recommend strongly that such appropriation ceilings not be made applicable to the authority for the construction of facilities under section 103(d) of the act. Such nonrecurring expenditures should not be permitted to interfere with the ability to carry out necessary functions under the act.

Mr. Chairman, if you have any questions, we will be glad to try to answer them.

Mr. JARMAN. Gentlemen, we appreciate your precise and effective presentation on this tremendously important program. May I ask as to the funding of the program. The bills call for \$46 million for the next fiscal year, an increase of \$9 million as I understand it over the present authorization.

What is that additional money needed for?

Mr. MACKENZIE. The additional money would be needed primarily to initially implement the provisions of the legislation which is now pending before you—for implementing the new grant program, for maintaining and sustaining air pollution control program activities by State and local governments.

Mr. JARMAN. I notice that the Senate report refers to the increase being in part necessitated by an expanded program of research into control of sulfur emissions, automobile exhaust emissions, and the added cost of the maintenance grant program.

Mr. MACKENZIE. Yes, sir. We have contemplated, but we have no clearances yet from the Bureau of the Budget, the submission of a supplemental appropriation request within the additional appropriation authority that would be provided. This request would include funds for the implementation of the grant program which I have mentioned as the principal item.

In addition, there are two other items that are under consideration, one relating to acceleration of research on the problem of controlling sulfurous pollution, principally from combustion sources, and, second to provide additional funds needed in the regulatory program relating to the control of emissions from motor vehicles.

Mr. JARMAN. Under the bills as originally introduced, it called for the \$46 million for fiscal year ending June 30, 1967, and then an open-end authorization proposed through 1973. The Senate has set figures of \$70 million for fiscal 1968 and \$80 million for fiscal 1969. What is your understanding of how these figures were arrived at?

Mr. MACKENZIE. During the period when the Senate committee was considering this legislation, the chairman of the committee requested



information from us as to our technical judgment of the sums that would be necessary to implement the Clean Air Act as amended and as proposed for amendment for the next several years.

The figures that are included in the Senate-passed version of S. 3112 are essentially the figures which we provided to the committee for the fiscal years 1968 and 1969.

Mr. JARMAN. The figures that you would anticipate if you operated under the open-end authorization?

Mr. MACKENZIE. Yes, sir. These are our technical estimates.

Mr. JARMAN. If you operate under an open-end authorization, what is your overall estimate through 1973?

Mr. MACKENZIE. Mr. Chairman, I can provide these figures for the record. I do not have them with me.

Mr. JARMAN. Do you remember roughly what the amount would total?

Mr. MACKENZIE. This would not exceed, in any single year as I remember the figures, \$100 million. It would be less than that.

(The information requested appears on p. 75.)

Mr. MACKENZIE. I excluded from this estimate the cost of any facility that may be constructed under the authority in section 103 of the Clean Air Act, to provide facilities for our own operations.

Mr. JARMAN. Thank you very much.

Mr. O'Brien?

Mr. O'BRIEN. Yes, I would like to ask a question. What was the appropriation for the last fiscal year?

Mr. MACKENZIE. The appropriation for the present fiscal year which has passed the House but has not yet been enacted by the Senate is approximately \$354½ million.

Mr. O'BRIEN. \$354½ million. Was this \$46 million for the fiscal year ending June 30 next budgeted?

Mr. MACKENZIE. Yes, sir. There was a contingency item included in the President's budget as transmitted to the Congress contingent on the passage of new legislation.

Mr. O'BRIEN. Yes. Now, the new fiscal year by the time this bill would be signed would be 3 or 4 months old, would it not?

Mr. MACKENZIE. I can't anticipate the schedule of the Congress in that matter. I would accept your judgment on this.

Mr. O'BRIEN. Then what harm would be done to the program if we were to take that into consideration and deduct that figure for the fiscal year ending June 30, 1967, to \$35 million?

Mr. MACKENZIE. Well, Mr. O'Brien, the current appropriation exceeds the figure that you have mentioned. That is, it is higher than \$35 million.

Mr. O'BRIEN. For the full fiscal year?

Mr. MACKENZIE. For the current fiscal year, yes, for present authorities under the Clean Air Act. In addition, if the \$46 million figure is reduced, it will prevent certainly the full implementation of the new authority for the additional grant program which is authorized in H.R. 13199 and S. 3112.

In addition, I would like to mention one other item. We have a very urgent need for additional funds to finance our activities on the regulatory control of motor vehicle pollution. Some members of this committee may recall that last year, at the time the amendments to the Clean Air Act including title II of the act pertaining to the control

of emissions from motor vehicles was pending, the provisions of the pending legislation were then amended to provide for an additional mechanism for administering the controls which would be adopted.

At the same time that this amendment was adopted, during passage of this legislation in the House, there was no corresponding change made in the appropriation authority under title II of the act which would take into account the additional testing that would be required for us to conduct under the terms of the amended legislation.

So that we are in urgent need of supplementary funds to effectively carry out title II of the Clean Air Act this year.

Mr. O'BRIEN. Is it not your position judging from your testimony that, while much has been accomplished under existing authorization, that you have been to a large extent shuffling rapidly to keep barely even?

Mr. MACKENZIE. I think we are doing a little bit more than keeping even and I hope that in the next few years this is going to actually reach an improvement. We are not making very much of an improvement now. I agree with you. I think we are essentially holding our own.

Mr. O'BRIEN. That is the point I am making, that in justification of the larger amount that you have gotten many communities into this, there is effort and the situation would have been a lot worse if we had not moved into the field; but nevertheless, the conditions that we are experiencing are not improving as a whole because the pollution is getting ahead of the remedy. Is that correct?

Mr. MACKENZIE. I mentioned that we are getting, I think as a result of our activities, about 80 new air pollution control programs across the country.

Mr. O'BRIEN. I understand.

Mr. MACKENZIE. You don't have any real results from these yet but for the years ahead we are laying a foundation now for real progress.

Mr. O'BRIEN. But if we stayed at the present pace, the point I am making is that it probably would outgrow the core, isn't that probably true?

Mr. MACKENZIE. It seems that this in fact would occur.

Dr. PRINDLE. If I may interrupt, I think in my own prepared statement there are some comments about the growth of the population, the growth of the gross national product, and so forth, that would lead one to this conclusion. Yes, sir.

Mr. O'BRIEN. You mentioned that about \$20 million is being spent on an annual basis at the State and local levels which is less than the Federal contribution at this stage.

Mr. MACKENZIE. Yes, sir.

Mr. O'BRIEN. Do you anticipate if the program is stepped up that the State and local spending will move up correspondingly?

Mr. MACKENZIE. Yes, sir. I certainly do.

Mr. O'BRIEN. You don't anticipate that they will sit back and look at a couple of hundred million dollars from the Federal Government and say "Well, let Uncle Sam do it"?

Mr. MACKENZIE. No, sir. I see real evidence of a desire on the part of State and local agencies to move ahead in this field and I think with appropriate stimulation and assistance from the Federal Government, this will be done.

Mr. O'BRIEN. I think that that is true in many many of these programs. I think that we have asked questions in this committee many times, will this program or that program stifle local initiative? We have had it with the building of medical colleges. We have had it with practically every area involved in public health. I am very heartened to notice as time passes that the predictions came true, that there was no draining off of private contributions to medical colleges, no lessening of effort at the State and local levels.

In so many of our programs I think that is not true but I am not going to go mentioning any programs now because they have nothing to do directly with health. I think in certain of the programs that we have had here in this Congress there has been a complete abandonment at the local level letting the Government take over the whole bit but I must say with all due respect to HEW that that has not occurred with your particular program.

Thank you very much, Mr. Chairman.

Mr. JARMAN. Mr. Nelsen.

Mr. NELSEN. No questions, thank you.

Mr. JARMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman. You say you are spending over \$35 million. I believe title I gave an authorization for fiscal 1967 of \$35 million and title II, \$845,000.

Mr. MACKENZIE. Yes, sir.

Mr. ROGERS of Florida. And this amount has been appropriated?

Mr. MACKENZIE. The total amount pending is \$35,577,000, sir.

Mr. ROGERS of Florida. And you think now you are prepared to take a jump. What is suggested in the Senate act, up to \$46 million for 1967?

Mr. MACKENZIE. Yes, sir.

Mr. ROGERS of Florida. I understood you had applications pending of \$500,000.

Mr. MACKENZIE. These are pending applications which we are unable to fund, from State and local agencies.

Mr. ROGERS of Florida. If we give you \$46 million, you could, of course?

Mr. MACKENZIE. Yes.

Mr. ROGERS of Florida. What would you use the rest of that money for?

Mr. MACKENZIE. Of the additional \$10 million which has been mentioned, \$7 million would be for implementation of the new grants program which would be authorized by the legislation pending before you.

Mr. ROGERS of Florida. Which would allow us to support up to 50 percent going programs?

Mr. MACKENZIE. Yes, sir.

Mr. ROGERS of Florida. Do you think this really is a good idea or should we try to encourage them to do more?

Mr. MACKENZIE. I think this is a way to encourage them to do more.

Mr. ROGERS of Florida. Suppose we say "You initiate a new one and then we will help you maintain that" rather than going in and supporting programs that they are now carrying on?

Mr. MACKENZIE. I think there is need, Mr. Rogers, to give a commitment to the State and local agencies that this is not a one-shot affair, that there will be a continuing support from the Federal Government.

Mr. ROGERS of Florida. I am saying suppose we say now "We are not going in and fund what you are doing presently."

Mr. MACKENZIE. We are not going to do this under the proposal.

Mr. ROGERS of Florida. Then why put it in the law?

Mr. MACKENZIE. It does not say this, sir.

Mr. ROGERS of Florida. It would be interpreted that way. Then you have no objection to our making it clear in the law that it will be new programs that could be expected to have some maintenance funds.

Mr. O'BRIEN. Would the gentleman yield?

I think that is clear to what was stated by the representative from Milwaukee, that you can have a fragmentation of a program. You have got a going operation, we will say, in Milwaukee and there are Federal funds so you have people reaching out from that area for money and you have a confused hodgepodge instead of a regional development. Is that correct?

Mr. MACKENZIE. We would not like to see anything that would fragment regional programs. Every effort should be made to develop and encourage regional programs. I think the legislation that is pending here would do this. I would not recommend that any change be made that would change that situation.

Mr. ROGERS of Florida. I would be concerned that we go in and undertake obligations that are already being well carried out for existing programs. If they have improvements in those programs—

Mr. MACKENZIE. Mr. Rogers, the legislation pending in S. 3112 and H.R. 13199 would provide that the Federal Government would support up to 50-percent of the total cost of ongoing programs. There is also a provision, however, that the Federal money cannot be used to substitute for State or local money, in that reductions in State and local expenditures cannot be made except as they may be related to nonrecurring expenses.

Mr. ROGERS of Florida. I would want to go into this very thoroughly so that we would not get in the position of going in and just funding programs that are currently being funded, but you feel that this would not be done.

Mr. MACKENZIE. This would not be done.

Mr. ROGERS of Florida. Then you would have no objection to our making clear in the language that this would not be done?

Mr. MACKENZIE. We felt that it was clear in the language, sir.

Mr. ROGERS of Florida. I understood from the testimony of the previous witnesses that they felt it would come in to give maintenance to ongoing present programs. At least that is what I understood from reading his statement. Maybe I misinterpreted but I will check into this thoroughly. What have you reported to the Congress in your semiannual reports on air pollution from automobile exhaust? When was the latest report submitted?

Mr. MACKENZIE. The latest report, I believe, was submitted in June. We have made semiannual reports on this subject since the legislation was enacted and have recounted progress in our research on the problem and also with respect to the promulgation of standards and requirements for compliance therewith by manufacturers or importers of new motor vehicles.

Mr. ROGERS of Florida. These requirements will be effective on the 1968 automobiles, is that correct?

Mr. MACKENZIE. That is correct, sir.

Mr. ROGERS of Florida. And what will that actually do? How will it affect the percentage of emissions and so forth? Could you give us a quick rundown?

Mr. MACKENZIE. Yes. Very briefly, the regulations which are now in effect will importantly reduce two classes of pollutants emitted from motor vehicles; first, hydrocarbons coming essentially from unburned fuel; and second, carbon monoxide which is a toxic gas. This will be accomplished in part by requiring essentially 100-percent control of the emissions from crankcases of automobiles.

Mr. ROGERS of Florida. This is no problem for the industry as I understand it.

Mr. MACKENZIE. This has been done by the industry since 1963, but not to the extent that is now required.

Mr. ROGERS of Florida. Yes.

Mr. MACKENZIE. The regulations will also require reduction in emissions in the exhaust system by roughly two-thirds of the quantity of unburned hydrocarbons and of carbon monoxide that would otherwise be emitted.

Mr. ROGERS of Florida. What are the remaining pollutants that will be injected into the air?

Mr. MACKENZIE. There is a third major type of pollution in the exhaust from many motor vehicles, namely, the oxides of nitrogen for which effective control measures have not yet been developed. In addition on the vehicle as a whole, there is also evaporation of fuel from the fuel tank and from the carburetor for which no regulations have yet been promulgated.

Mr. ROGERS of Florida. I see. How many people do you have involved in research on the automobile emission problem in-house?

Mr. MACKENZIE. There are 31 positions budgeted for research relating to automotive emissions.

Mr. ROGERS of Florida. How many people are in your shop now?

Mr. MACKENZIE. There are roughly a little less than 700.

Mr. ROGERS of Florida. 700. Where are they mostly located?

Mr. MACKENZIE. They are mostly located in our laboratories in Cincinnati.

Mr. ROGERS of Florida. Are you doing any work on an electric motor?

Mr. MACKENZIE. We are proposing this year to inaugurate an evaluation of the possibilities of developing essentially new propulsion systems for motor vehicles that would be less pollution prone than the current type of engines.

Mr. ROGERS of Florida. Are you making any progress?

Mr. MACKENZIE. Included in this would be an evaluation of the possibilities of developing electrically driven vehicles. We don't know enough about it yet in my opinion to make any definitive statements. We have looked to see where research is going on on this problem.

As I recall it, there is, so far as we have been able to find out, about \$9 million a year being spent in Government and about \$9 million by private sources related to development of electric systems for driving automobiles.

Mr. ROGERS of Florida. And where is the \$9 million in Government being spent, in your shop?

Mr. MACKENZIE. No, sir.

Mr. ROGERS of Florida. Where?

Mr. MACKENZIE. Primarily in the Department of Defense and other departments.

Mr. ROGERS of Florida. I see. Could you give us a listing of those departments and a rundown?

Mr. MACKENZIE. Insofar as we have developed this, we will be glad to, yes.

(The information requested, when supplied, will be found in the committee files.)

Mr. ROGERS of Florida. Have you been working with industry on trying to develop an electric motor for an automobile power system?

Mr. MACKENZIE. We have not reached that stage yet, Mr. Rogers.

Mr. ROGERS of Florida. Have you made any overtures to them?

Mr. MACKENZIE. We have discussed the matter with them, yes.

Mr. ROGERS of Florida. What reaction have you gotten?

Mr. MACKENZIE. I think the reaction is quite variable. Some of them are, let us say, enthusiastic and others are very dubious that it will ever come about.

Mr. ROGERS of Florida. I understood that there was a public announcement that one of the major companies is doing significant research in this area.

Mr. MACKENZIE. More than one is.

Mr. ROGERS of Florida. More than one?

Mr. MACKENZIE. Yes, sir.

Mr. ROGERS of Florida. Don't you think it would be a good idea for you to encourage this and try to get some cooperative effort between what we are doing and what they are doing?

Mr. MACKENZIE. This is the major purpose of our initial activity this year, sir.

Mr. ROGERS of Florida. Are you trying to coordinate with Defense at all, with regard to the work that they are doing?

Mr. MACKENZIE. We haven't reached that stage. We are not doing anything on a major scale yet so that it is a little difficult for us to attempt to coordinate something.

Mr. ROGERS of Florida. I misunderstood you. I thought you were doing something.

Mr. MACKENZIE. We are exploring the field and evaluating the feasibility of this development. This is what we propose to do this year and we consider that this is a necessary initial step before we determine whether we should go further and if so, how.

Mr. ROGERS of Florida. I noticed in your statement you said that " \* \* \* we will almost certainly need to develop virtually pollution-free sources for motor vehicles."

Mr. MACKENZIE. Yes, sir.

Mr. ROGERS of Florida. If that is the goal and this is what you are trying to do and this is the only way to reach the pollution problem, I would think we are moving rather slowly if we really have not made any contact and are just in discussion.

Mr. MACKENZIE. We have discussed here primarily electric propulsion systems. There are other systems for driving automobiles which have a low pollution potential. We have been interested in turbine engines for example, and have obtained a turbine engine in an automobile for test purposes and evaluated this.

Very briefly, the pollutant emissions from such type of engine are very materially less than the reciprocating type of engine commonly used at the present time. The pollution ranges from roughly 10 to 15 percent of the emissions of hydrocarbons and carbon monoxide that come from the usual type of engine.

The oxides of nitrogen emissions are somewhat higher but, on the tests that we have made, they are also less than those that come from the existing type of reciprocating engine.

Mr. ROGERS of Florida. I am sure the committee would be interested in receiving some information on what you are doing. I would think some coordination in Government and with industry would be very desirable in this field. I think the committee would be very interested in following your efforts along this line.

Mr. MACKENZIE. We would certainly expect to report to the Congress in the reports to which you have made reference, sir.

Mr. ROGERS of Florida. On page 10, you refer to health hazards of air pollution: "the early efforts of many scientists concerned with this problem produced a substantial body of evidence associating air pollution with illness and death from \* \* \*" various diseases. Have you any figures that you could submit to the committee on that?

Mr. MACKENZIE. We would be glad to submit a statement as to this giving references and similar matters if this would be helpful.

Mr. ROGERS of Florida. I think this would be helpful to pinpoint what we have been able to find so far.

(The information requested follows:)

#### THE HEALTH HAZARDS OF COMMUNITY AIR POLLUTION

##### INTRODUCTION

The connection between community air pollution and respiratory disease in the general population has been the subject of an appreciable degree of research for only 10 years—too short a period to permit detailed exploration of all aspects of this complex environmental health problem. In that time, however, there have been numerous epidemiological and statistical studies of illness and death from respiratory diseases and impairment of respiratory function in relation to air pollution as well as many laboratory and clinical studies of the effects of single pollutants or combinations of pollutants on man and animals.

This research has produced a substantial body of factual information concerning the ways in which exposure to community air pollution affects the human respiratory system. The main thrust of the evidence is clear and conclusive—the types and levels of air pollution which are now commonplace in American communities are an important factor in the occurrence and worsening of chronic respiratory diseases and may even be a factor in producing heightened human susceptibility to upper respiratory infections, including the common cold.

In general, chronic diseases, including those associated with air pollution, develop slowly over long periods of time. In contrast to infectious diseases, they are more likely to result from a series of insults to the body rather than from a single event. In consequence, it may be difficult, perhaps impossible, to satisfy the traditional scientific preference for concrete evidence of a direct and easily demonstrable cause-and-effect relationship between such factors as air pollutants and such effects as the development of chronic respiratory disease.

This problem and its implications for public health were put into meaningful perspective by the Surgeon General of the Public Health Service in his opening address to the 1962 National Conference on Air Pollution: "I submit that much of the speculation and controversy about whether or not air pollution causes disease is irrelevant to the significance of air pollution as a public health hazard.

"That there is frequently a simple association between an infectious disease agent and the acute disease reaction which it provokes was once a startling revelation. And in public health it has served us well and continues to serve us well. But we have learned that it is not the master key that unlocks all the secrets of disease and health. The idea that one factor is wholly responsible for any one illness is patently too simple to provide all the answers we need to deal with the chronic diseases which are on the rise today.

"Chronic bronchitis, which in Great Britain is established as a specific disease entity, is a good example. It develops over a long period of time and can become crippling through a combination of many factors—air pollution, smoking, repeated and recurring bouts with infectious agents, occupational exposures—all affected, perhaps, by an hereditary predisposition. What then is the cause of chronic bronchitis? The answer is obvious. There is probably no single cause, but there is sufficient evidence that air pollution can and does contribute to its development. This is what really matters, whether we choose to consider it the cause, one of several causes, or simply a contributing factor."

There were in 1962 and there still are deficiencies in scientific knowledge of the relationship between air pollution and respiratory disease. A need exists for more quantitative information—for more precise data concerning the pollutants which affect human health and in what amounts and under what conditions they produce their effects. But the qualitative evidence is conclusive. There is no doubt that air pollution is a factor which contributes to illness, disability, and death from chronic respiratory diseases. In a report at the 1962 National Conference, a panel of health experts said: "The evidence that air pollution contributes to the pathogenesis of chronic respiratory diseases is overwhelming."

This report summarizes some of that evidence. It approaches the subject from both the standpoint of research relating to the occurrence and worsening of specific respiratory diseases or the occurrence of illness and death among urban dwellers and from the standpoint of research on the effects of specific air pollutants or classes of pollutants. For brevity, the latter portion deals only with a few of the most important of the pollutants present in community air—sulfur oxides, oxidants, particulates, hydrocarbons, and oxides of nitrogen. Though this summary is focused primarily on the association between air pollution and respiratory disease, which is clearly the major health problem posed by the contemporary air pollution problem, it includes some discussion of other health effects.

The adverse effects of air pollution on human health are undoubtedly most serious in those urban communities which have the greatest concentrations of air pollution sources and people. A great many of the epidemiological and statistical studies mentioned in the body of this report was made in large metropolitan areas, ranging in population from the millions down to the tens of thousands. Among them are such places as New York and Los Angeles, at the upper end of the population scale, as well as such smaller cities as Nashville and Buffalo.

But the health hazards of air pollution clearly are not limited to cities above a certain size. A great many small communities in the United States suffer to some extent from air pollution problems—problems which differ in degree from those experienced by large cities and which may be less complex but are nonetheless likely to produce adverse health effects on the people exposed to them. In addition, any community with a few uncontrolled air pollution sources of appreciable size may experience occasional build-ups of pollution in the air, resulting in widespread though often unnoticed increases in illness and death, during periods of adverse meteorological conditions. This can happen, and has happened, in places as large as New York City as well as such a small industrial community as Donora.

The evidence is clear that health can be subtly but seriously threatened by daily exposure to polluted community air. We are concerned, not only with the so-called normal healthy individual, upon whom adverse effects may not be manifested until there have been many years of exposure, but also with infants and children, elderly people, and persons already afflicted with respiratory and cardiovascular disorders, all of whom may have an above average susceptibility to the adverse effects of pollutants in the air. In short, what is already known about



the relationship of air pollution to illness, disability, and premature death, together with considerations of prudence in the protection of public health, leave no doubt that the contemporary air pollution problem is a threat to the lives and the health of millions of people in all parts of the country.

#### ACUTE EFFECTS

The most dramatic illustrations of adverse health effects due to air pollution have been the acute episodes in which serious illness due to sharp increases in air pollution concentrations was sudden in onset and in some cases fatal in outcome. The best known are those in the Meuse Valley, Belgium (1930);<sup>1</sup> Donora, Pennsylvania (1948);<sup>2</sup> London (1952 and 1962);<sup>3,4</sup> and New York City (1958).<sup>5</sup> Excess deaths over normal expectancy ranged from 17 in Donora to 4000 in the 1952 London smog. In six other recorded episodes in the British Isles prior to 1952, going as far back as 1873, excess deaths ranged from 75 to 692 and totaled over 2500.<sup>6</sup> In all these instances, most of the fatalities occurred among persons who were already suffering from chronic cardiorespiratory disorders.

Sensational and tragic as these acute episodes are, health authorities are even more concerned today with the slow, insidious effects on human lungs of air pollution levels which are much lower but continued every day and year after year. That air pollution does indeed increase the prevalence or severity of chronic respiratory diseases has been stated with more and more certainty by outstanding authorities. In addition to chronic bronchitis and emphysema, bronchial asthma has been linked to air pollution, as has also an acute respiratory ailment, the common cold. And other pollutants besides cigarette smoke which man inhales regularly have been singled out—and for similar reasons—as possibly contributing to the rapid growth of lung cancer.

The evidence which associates air pollution with chronic obstructive ventilatory disease and lung cancer comes from three types of investigations: statistical studies of morbidity and mortality, epidemiological studies, and clinical and laboratory studies of animals—and, in some cases, of humans—exposed to various pollutants, singly or in combination. The results of such studies are indicated below.

#### LUNG CANCER

Deaths from cancer of the lung, especially among males, have been increasing rapidly in recent years.<sup>7</sup> Also notable is the striking urban-rural differential in lung cancer mortality. As Kotin has stated, "The most satisfactory explanation for the consistent observation of an increased incidence of lung cancer in urban populations is exposure to polluted air."<sup>8</sup>

It is important to note that cancer of the lung is believed to reflect the interaction of multiple factors. It is highly unlikely that there is but one etiologic agent, and therefore, it may never be possible to disentangle completely all the factors involved. However, it is believed that research work now under way, or contemplated, will permit ultimately an assessment of the role of several external factors in the causation of lung cancer.<sup>9</sup>

Presently available evidence of the possible role of air pollution in the etiology of lung cancer is based on the findings of a number of research projects in the epidemiological, physicochemical, and biological fields. Air pollution has been in-

<sup>1</sup> Firket, J. (Secretary): Sur les causes des accidents survenus dans la vallée de la Meuse, lors des brouillards de Décembre 1930. Bull. Acad. Roy. Med. Belg. 11: 688-741, 1931.

<sup>2</sup> Schrenk, H. H., et al: Air Pollution in Donora, Pa. Epidemiology of the Unusual Smog Episode of October 1948, Public Health Bulletin No. 806, Federal Security Agency, Washington, D.C., 1949.

<sup>3</sup> Ministry of Health: Mortality and Morbidity during the London Fog of December 1952, Report by a Committee of Departmental Officers and Expert Advisers Appointed by the Minister of Health. Reports on Public Health and Medical Subjects, no. 96, H.M. Stationery Office, 1954.

<sup>4</sup> Fog and Frost. British Med. J. 2: 1626 (Dec. 15) 1962.

<sup>5</sup> Greenburg, L., et al: Report of an air pollution incident in New York City, Nov. 1958. Pub. Health Rep. 77: 7-16 (Jan.) 1962.

<sup>6</sup> Major Smog Disasters. In: Clean Air Yearbook, 1963-1964. National Society for Clean Air, London, England, p. 84.

<sup>7</sup> Bailar, J. C., III, King, H., and Mason, M. J.: Cancer Rates and Risks. USDHEW, PHSP 1148, U.S. Government Printing Office, Washington, D.C., 1964.

<sup>8</sup> Kotin, P. and Falk, H. L.: Atmospheric factors in pathogenesis of lung cancer. Adv. Cancer Res. 7: 475-514, 1963.

<sup>9</sup> Nelson, H.: Carcinogenic implications of inhaled pollutants. Arch. Environ. Health 8: 100-104 (Jan.) 1964.

criminated to the extent that it is held to be partially responsible for the increase in lung cancer, or at least to be an aggravating factor in this disease.<sup>10</sup> Most informed opinion, however, considers cigarette smoking to be a much more significant agent.

Four independent studies have shown that previous longtime residence in other countries with different degrees of air pollution was associated with varying incidence of lung cancer, the variation in frequency being dependent upon or associated with the factor of exposure to polluted air in the earlier parts of life. Thus, in groups of immigrants to New Zealand and to Australia from Great Britain, where air pollution levels are far higher than in comparatively unindustrialized New Zealand and Australia, lung cancer mortality was higher than among native New Zealanders and Australians, respectively, even though they were all from a similar ethnic background and had similar smoking habits.<sup>11, 12</sup> Similarly, in a group of immigrants to South Africa from Great Britain, the mortality from lung cancer was higher than among white South Africans, who smoke even more than the British.<sup>13, 14</sup> In a Norwegian group emigrant to the United States,<sup>15</sup> it was found that the lung cancer occurrence was intermediate between that of Norwegians who stayed at home and that of native Americans, being about three-quarters the rate for native Americans, whereas the rate in Norway—where there is much less air pollution—is only half the American rate.

Deaths from lung cancer have a rate in the largest metropolitan areas in the United States which is twice the rural level.<sup>16</sup> A difference remains even after full allowance is made for differences in smoking patterns. In general, the rate is in direct proportion to city size, as is also the degree of air pollution.<sup>17</sup>

In "Smoking and Death Rates" (1958), by Hammond and Horn,<sup>18</sup> this illuminating comment was made: "As expected, the death rate due to lung cancer \* \* \* was found to be higher in urban than in rural areas. The age-standardized death rate was 34 per 100,000 in rural areas, as compared with 56 per 100,000 in cities of over 50,000 population. However, cigarette smoking is more common among city dwellers than among men in rural areas. Standardized for smoking habits as well as for age, the rate was 39 per 100,000 in rural areas and 52 per 100,000 in cities of over 50,000 population. Thus, when standardized for both factors, the rate was still 25 percent lower in rural areas than in large cities."

Several British studies provide further confirmation on this point.

Stocks and Campbell, who had conducted in earlier study (1955),<sup>19</sup> said that their studies suggested that "abolition of cigarette smoking might be expected to reduce the deaths of men in Liverpool from lung cancer by about one-half, and three-quarters of the remaining half would be due to some local cause only slightly present in the rural area and most likely to be some kind of air pollution." Stocks was more specific in 1960. In summarizing some later studies he stated: "Lung cancer mortality is strongly correlated with smoke density in the atmosphere in 26 areas of Northern England and Wales, in 45 districts of Lancashire and the West Riding of Yorkshire, and in 30 county boroughs, whilst similar though weaker correlations are found within Greater London."<sup>20</sup>

<sup>10</sup> Shimkin, M. B.: Science and Cancer, PHS Pub. No. 1162, USDHEW, National Cancer Institute, 1964.

<sup>11</sup> Eastcott, D. F.: The epidemiology of lung cancer in New Zealand. *Lancet* 1:37-39 (Jan. 7) 1958.

<sup>12</sup> Dean, G.: Lung cancer in Australia. *Med. J. Australia*. 49:1003-1006 (June 30) 1962.

<sup>13</sup> Dean, G.: Lung cancer among white South Africans. *Brit. Med. J.* 2:852-857 (Oct. 31) 1959.

<sup>14</sup> Dean, G.: Lung cancer among white South Africans, Report on a further study. *Brit. Med. J.* 5267:1959-1966 (Dec. 16) 1961.

<sup>15</sup> Haenszel, W.: Cancer mortality among foreign-born in the United States. *J. Natl. Cancer Inst.* 26:37-182 (Jan.) 1961.

<sup>16</sup> Anderson, R. J.: Epidemiologic studies of air pollution. *Dis. Chest* 42:474-481 (Nov.) 1962.

<sup>17</sup> Haenszel, W., et al: Tobacco Smoking Patterns in the United States. Public Health Monograph No. 45, USDHEW, PHSP 463, U.S. Government Printing Office, Washington, D.C. 1956.

<sup>18</sup> Hammond, E. C., and Horn, D.: Smoking and death rates—report on forty-four months of follow-up of 187,788 men. II. Death rates by cause. *J.A.M.A.* 166:11, 1294-1306 (March 15) 1958.

<sup>19</sup> Stocks, P., and Campbell, J. M.: Lung cancer death rates among nonsmokers and pipe and cigarette smokers. An evaluation in relation to air pollution by benzo(a)pyrene and other substances. *Brit. Med. J.* 4945:923-929 (Oct. 15) 1955.

<sup>20</sup> Stocks, P.: Relations between atmospheric pollution in urban and rural localities and mortality from cancer, bronchitis and pneumonia, with particular reference to 3, 4 benzo(a)pyrene, beryllium, molybdenum, vanadium and arsenic. *Brit. J. Cancer* 14:379-418, 1960.

Laboratory investigations have provided further clues. In one study, a selected strain of mice, sensitized with influenza virus and then exposed to ozonized gasoline, similar to photochemical smog, developed bronchogenic cancer of the type which humans have.<sup>22-23</sup> In another recent study, repeated intratracheal administrations to a group of hamsters of benzo (a) pyrene in particulate form, carried by an inert dust, induced 100 percent incidence of bronchogenic carcinoma.<sup>24</sup> The pollutant used in this last study, benzo (a) pyrene, is one of the commonest carcinogens in the community air over our cities.

There is some evidence that the combined effects of cigarette smoking and urban residence in their association with lung cancer are much more than additive.<sup>24</sup> In this connection, it is widely held that air pollution is a highly significant component of urban residence.

Smoking has been shown to inhibit ciliary action in the respiratory tree, and thus may make the lungs more vulnerable to the harmful effects of air pollution.<sup>25</sup> But air pollution too inhibits ciliary action and may in turn make the lungs more vulnerable to the effects of smoking.<sup>21</sup> Supplementing the epidemiological findings and the results of laboratory and other studies. The concept that polluted air contributes to carcinogenesis is based, according to Kotin,<sup>26</sup> on the following experimental considerations.

1. Carcinogenic agents have been identified in the polluted air of essentially all cities in which they have been sought.

2. The stability and survival of carcinogenic hydrocarbons in the atmosphere are compatible with the postulated biological effect.

3. Bio-assay has established the carcinogenic properties of the compounds identified in and extracted from polluted air.

4. Alteration in function and structure of the respiratory epithelium of representative mammalian species has been demonstrated following exposure to a broad spectrum of environmental irritants.

5. Carcinogenic agents and respiratory irritants occur in the atmosphere in a physical state that is compatible with a biological effect on exposed intact host.

6. Soot recovered from human lungs has been shown to be free of the carcinogen, 3:4-benzopyrene (indicating that this carcinogen has been deposited in the lungs)

#### CHRONIC BRONCHITIS

In Great Britain, nearly 10 percent of all deaths and more than 10 percent of all industrial absences due to illness are caused by chronic bronchitis.<sup>27</sup> It is becoming evident that this condition, or one very similar to it, has a higher prevalence in this country than we had thought.<sup>28</sup> One investigation in the United States, using the same criteria as the British—that is, chronic productive cough, most days, for three months of two successive years—found chronic bronchitis in 21 percent of a series of males 40 to 59 years of age.<sup>29</sup>

Cigarette smoking and air pollution are accepted in Great Britain as distinct causes of chronic bronchitis.<sup>30</sup> Positive associations with mortality from this disease have been shown by all these air pollution indexes: population density,<sup>31</sup>

<sup>22</sup> Kotin, P., and Falk, H. L.: Air pollution and lung cancer. In: Proceedings, National Conference on Air Pollution, USDHEW, PHS Pub. No. 1022, U.S. Government Printing Office, Washington, D.C., 1963.

<sup>23</sup> Kotin, P., and Falk, H. L.: II. The experimental induction of pulmonary tumors in strain-A mice after their exposure to an atmosphere of ozonized gasoline. *Cancer* 9:910-917 (Sept.-Oct.) 1956.

<sup>24</sup> Saffioti, U., et al: Experimental studies of the conditions of exposure to carcinogens for lung cancer induction. *J. APCA* 15:23-25 (Jan.) 1965.

<sup>25</sup> Haenssel, W., et al: Lung cancer mortality as related to residence and smoking histories. I. White males. *J. Natl. Cancer Inst.* 28, 947-1001 (April) 1962.

<sup>26</sup> Ballenger, J. J.: Experimental effect of cigarette smoke on human respiratory cilia. *New Eng. J. Med.* 268: 832-835, 1962.

<sup>27</sup> Kotin, P.: Air pollution with carcinogenic substances. *Acta Union Internationale Contre le Cancer* 19: 3-4, 469-471, 1963.

<sup>28</sup> Fletcher, C. M.: Chronic bronchitis: Its prevalence, nature, and pathogenesis. *Am. Rev. Resp. Dis.* 80:488-494, 1959.

<sup>29</sup> Ferris, B. G., Jr. and Anderson, D. O.: The prevalence of chronic respiratory disease in a New Hampshire town. *Am. Rev. Resp. Dis.* 86:165-177 (Aug. 1962).

<sup>30</sup> Gocke, T. M., and Duffy, B. J.: Epidemiology of chronic bronchitis in Jersey City. *Arch. Int. Med.* 110:606-614 (Nov.) 1962.

<sup>31</sup> Holland, W. W., et al: Respiratory disease in England and the United States. *Arch. Environ. Health* 10: 338-343 (Feb.) 1965.

<sup>32</sup> Fletcher, C. M.: Chronic bronchitis, smoking, and air pollution. In: James, G., and Rosenthal, T. (editors): *Tobacco and Health*. Charles C. Thomas, Springfield, Ill., 1962.

amount of fuel used,<sup>32</sup> sulfur dioxide air levels,<sup>33</sup> settled dust measures,<sup>34</sup> airborne dust measures,<sup>35</sup> and decreased visibility.<sup>36</sup> Persons known to suffer from chronic bronchitis, and kept under regular observation, showed a worsening of their symptoms on days of higher air pollution.<sup>37</sup>

#### PULMONARY EMPHYSEMA

Morbidity and mortality from pulmonary emphysema are increasing rapidly in the United States.<sup>37</sup> In the 10-year period from 1950 through 1959, deaths among males from this cause rose from less than 1.5 per hundred thousand population to near 8 per hundred thousand.<sup>38</sup> The extent and cost of this disease are further indicated by social security figures. Of 286,434 persons who received monthly payments for disability in 1962, 17,630 or 6.2 percent were suffering from emphysema.<sup>39</sup> This percentage was exceeded only by those who had arteriosclerotic heart disease. Social Security disability payments to persons for whom emphysema is the primary medical diagnosis are estimated at about \$0 million a year.

Patients with pulmonary emphysema improve when they are protected from exposure to irritant air pollution. One study demonstrated that when such patients are placed in a room in which the outdoor air of a smoggy Los Angeles day has been purified by electrostatic precipitation and charcoal filtration, they express subjective relief and also show objective improvement after 24 hours.<sup>40</sup> The fact that emphysema seems to be increasing especially in urban areas also points to air pollution as a possible contributing factor, as does also the striking urban-rural gradient found for deaths from emphysema.<sup>41</sup> Data for white males and white females on an age-adjusted basis show that the rates are about twice as high in urban areas as in rural areas.

#### CHRONIC CONSTRUCTIVE VENTILATORY DISEASE

The effort required for breathing is increased as a result of inhaling irritant air pollutants. Studies have shown that such pollutants, at levels which are reached at times in urban environments, can cause constriction in the air passages.<sup>42</sup> This might contribute to a persistent nonspecific respiratory condition known as chronic constrictive ventilatory disease. While healthy persons may not notice the extra breathing effort imposed by airway constriction, this added burden may become unbearable for persons whose lungs or hearts are already functioning marginally because of respiratory disease.

#### BRONCHIAL ASTHMA

This is another condition which is often made worse by air pollution. Since there is a long list of stimuli which are capable of triggering asthmatic attacks, it is difficult to ascertain the role of air pollutants. It has long been known that occupational exposure to certain dusts and vapors, including many which are sometimes found in substantial concentration in the air over our cities,

<sup>32</sup> Daly, C.: Air pollution and causes of death. *Brit. J. Prev. Soc. Med.* 13: 14-27 (Jan.) 1959.

<sup>33</sup> Pemberton, J. and Goldberg, C.: Air pollution and bronchitis. *Brit. Med. J.* 4387: 567-573 (Sept. 4) 1954.

<sup>34</sup> Burn, J. L. and Pemberton, J.: Air pollution, bronchitis, and lung cancer. *Int. J. Air & Water Poll.* 7: 5-16 (Jan.) 1963.

<sup>35</sup> Stocks, P.: Cancer and bronchitis mortality in relation to atmospheric deposit and smoke. *Brit. Med. J.* 5114: 74-79 (Jan. 10) 1959.

<sup>36</sup> Reid, D. D.: General epidemiology of chronic bronchitis. *Proc. Roy. Soc. Med.* 49: 767-780, 1956.

<sup>37</sup> Mortality Analysis and Summary. In: *Vital Statistics of the United States 1960*, Vol. II, Sec. 1. USDHEW, PHS, National Vital Statistics Division.

<sup>38</sup> A Study of Pollution—Air, A Staff Report to the Committee on Public Works, United States Senate. U.S. Government Printing Office, Washington, D.C., 1963.

<sup>39</sup> Disability Applicants Under the Old-Age, Survivors, and Disability Insurance Program, 1962, Selected Data, USDHEW, Social Security Adm., Div. of the Actuary, Baltimore, A:A: 4, April 1964.

<sup>40</sup> Motley, H. L., et al.: Effect of polluted Los Angeles air (smog) on lung volume measurements. *J. A.M.A.* 171:1469-1477 (Nov. 14) 1959.

<sup>41</sup> Merrill, M. H.: Public health responsibilities and program possibilities in chronic respiratory diseases. *Am. J. Pub. Health* 53:25-33 (March) 1963.

<sup>42</sup> Speizer, F. E., and Ferris, E. C.: The prevalence of chronic non-specific respiratory disease in road tunnel employees. *Am. Rev. Resp. Dis.* 88:206-212 (Aug.) 1963.

<sup>43</sup> Prindle, R. A., et al.: Comparison of pulmonary function and other parameters in two communities with widely different air pollution levels. *Am. J. Pub. Health* 53:200-216 (Feb.) 1963.

can trigger asthmatic attacks. And the Donora catastrophe provided a striking example of local aggravation of asthmatics (with a number of deaths reported), caused by fumes emanating from steel and other manufacturing plants, under conditions favorable for their accumulation.<sup>1</sup>

In New Orleans, epidemic outbreaks of "asthmatic attacks" have been associated with certain local wind conditions.<sup>2, 3</sup> At first, spontaneous underground combustion in abandoned city disposal dumps had seemed to be incriminated. However, a recent study suggests that there is more than one point source of air pollution causing an asthmatic-type disease in New Orleans, and there are probably multiple sources.<sup>4</sup>

There have been other instances—one in Pasadena,<sup>5</sup> another in Nashville<sup>6</sup>—in which air pollutants have been shown, in epidemiological studies, to precipitate attacks of bronchial asthma in known cohorts of asthmatics. The mechanism by which airborne materials precipitate attacks of asthma is not yet known, but the significant fact is that asthma, or an asthma-like disease, can be induced by man-made community air pollutants.

For bronchial asthma due to natural airborne allergenic agents (pollen and spores), see below: Effects of aeroallergens.

#### "YOKOHAMA ASTHMA"

As long ago as 1946, many cases of a respiratory disorder commonly referred to as "Yokohama asthma" appeared among American troops stationed in the highly industrialized Yokohama area of Japan, and soon spread to dependents who were living in that area. Later the same condition was noted among our military personnel in the Tokyo area.<sup>7, 8, 9, 10</sup> Earlier studies indicated that the disease correlated best with air contaminants and smog. Severe attacks have been observed to be more frequent in the winter months, when smoke and fumes from the heavily industrialized Kanto Plain (Tokyo-Yokohama area) attain ground level concentrations so intense that they represent a hazard to low-flying small aircraft. Removal of affected personnel from the area, especially if early, usually results in recovery. However, permanent damage has resulted in patients who were not promptly removed from the area.<sup>11, 12</sup>

"Tokyo-Yokohama asthma" is still under detailed study, but several important conclusions have already been reached.<sup>13</sup> Studies conducted in 1960 in a pulmonary function laboratory revealed that the patients were much more severely affected than was the original clinical impression. In these studies, the patients' incapacity due to shortness of breath became apparent, and their failure to respond to bronchodilators was documented. Starting in 1961, 182 men were studied on three occasions over an 18-month period, and 8 revealed a typical history of "T-Y asthma." Follow-up studies in 1962 on 244 cases who were returned to the United States revealed that 64 percent still had abnormal inflow patterns, and in some, significant emphysema was present. The evidence seems to be increasing that emphysema may occur in susceptible individuals if they stay too long in the Kanto Plain area. A total of 620 patients have been diagnosed as having "T-Y asthma" from 1960 to 1962. All have a negative history of clinical respiratory disease prior to coming to Japan. All but 18 were moderate-to-heavy cigarette smokers.

<sup>1</sup> Lewis, R., et al: Air Pollution and New Orleans asthma; a preliminary report. Pub. Health Rep. 77: 947-954 (Nov.) 1962.

<sup>2</sup> Weill, H., et al: Preliminary report: clinical and allergic study of New Orleans Asthma. Presented at Sixth Air Pollution Medical Research Conference, San Francisco, Calif. Jan. 28-29, 1963.

<sup>3</sup> Weill, H., et al: Further observations on New Orleans asthma. Arch. Environ. Health 10: 148-151 (Feb.) 1965.

<sup>4</sup> Schoettlin, C. E., and Landau, E.: Air Pollution and asthmatic attacks in the Los Angeles area. Pub. Health Rep. 76: 543-548 (June) 1961.

<sup>5</sup> Zeidberg, L. D., et al: The Nashville air pollution study: V. Mortality from diseases of the respiratory system in relation to air pollution. Presented at 91st Annual Meeting of the APHA meeting, Kansas City, Nov. 1963.

<sup>6</sup> Huber, T. E., et al: New environmental respiratory disease (Yokohama asthma). A.M.A. Arch. Indust. Hyg. & Occupat. Med. 10: 399-408 (Nov.) 1956.

<sup>7</sup> Phelps, H. W., et al: Air pollution asthma among military personnel in Japan. J. A.M.A. 175: 990-993 (March 18) 1961.

<sup>8</sup> Phelps, H. W.: Air pollution asthmatic bronchitis among United States personnel in Japan. Japan Heart J. 2: 180-186 (April) 1961.

<sup>9</sup> Beard, R. R., et al: Observations on Tokyo-Yokohama asthma and air pollution in Japan. Pub. Health Rep. 76: 5, 439-444 (May) 1964.

<sup>10</sup> Motley, H. L., and Phelps, H. W.: Pulmonary function impairment produced by atmospheric pollution. Dis. Chest 45: 154-162 (Feb.) 1964.

<sup>11</sup> Phelps, H. W.: Follow-up studies in Tokyo-Yokohama respiratory disease. Arch. Environ. Health 10: 143-146 (Feb.) 1965.

## THE COMMON COLD AND OTHER RESPIRATORY DISEASES

Common colds and other infections of the upper respiratory tract occur more frequently in areas with high pollution levels. This was indicated in a study in a small Maryland city as long ago as 1950,<sup>12</sup> and has since been confirmed by studies in Great Britain,<sup>13</sup> Japan,<sup>14,15</sup> and the Soviet Union.<sup>16</sup> In connection with a study of air pollution in the Detroit-Windsor area by a U.S.-Canada International Joint Commission,<sup>17</sup> responses to a Cornell Medical Index questionnaire indicated that people living in the two high-pollution areas in Detroit reported themselves afflicted with more symptoms of illness than people living in the two low-pollution areas. This was particularly true, and apparently statistically significant, in regard to prevalence of coughing and colds.

An interim analysis of the diaries of homogeneous groups of student nurses in a relatively polluted area, Los Angeles, and a relatively unpolluted one, Santa Barbara, California, showed that the mean frequencies of all respiratory and other symptoms in the former area were equal to or greater than the corresponding symptom frequencies in the latter.<sup>18</sup> The probability of any one nurse reporting a cough on any one day of the period analyzed was 20 percent in Los Angeles and 6 percent in Santa Barbara. In the same study, a time-associated relationship between daily oxidant levels and the mean daily frequency of eye discomfort in the Los Angeles group was reported.

## ALL RESPIRATORY DISEASES

That there is a definite link between air pollution and respiratory disease was further indicated when results were reported in November 1963 from a survey of deaths in and around Nashville, Tennessee, for a 12-year period ending in 1960.<sup>19</sup> This would appear to provide evidence that normal city levels of air pollution correlate well with death rates from diseases of the respiratory system. Altogether, data on 33,207 deaths were studied and, even when full allowance was made for differences in age, color, and socio-economic status, the sections of the city subjected to heaviest air pollution were areas of maximum deaths from all respiratory diseases and from such specific respiratory diseases as tuberculosis, influenza, and pneumonia. Although smoking was not included in this study, it is not considered to be of significance for those specific diseases of the respiratory system. What is significant is that mortality ratios were correlated with air pollution levels in the ambient air.

Similar findings were made in a study conducted in the area of Buffalo, New York. A recent report on this study indicated that high levels of air pollution, as measured by suspended particulates, were correlated with elevated mortality from all causes and with mortality due to chronic respiratory diseases. Among white males 50 to 69 years old, the death rate for all causes was 50 percent higher in the area of heaviest particulate pollution than in the area of lowest particulate pollution. A similar mortality pattern was found among women, which supports the hypothesis that a non-occupational environmental factor was responsible. An even more striking relationship was found between particulate levels and mortality from chronic respiratory diseases. In this respect, the

<sup>12</sup> Helmann, H. et al: Health and air pollution. A study on a limited budget. *A. M. A. Arch. Indust. Hyg. & Occupat. Med.* 3:398-407 (April) 1951.

<sup>13</sup> Holland, W. W., et al: Influence of the weather on respiration and heart disease. *Lancet* 2:338-341 (Aug. 2) 1961.

<sup>14</sup> Abe, S.: Air pollution in Sapporo. *Science and Labor* 13:98-108, 1958. (Quoted by Toyama, T. in *Air Pollution and its Health Effects in Japan*. *Arch. Environ. Health* 8:161-181 (Jan.) 1964.

<sup>15</sup> Saruta, N.: Effects of air pollution on the health of people of northern Kyushu, Japan. (First Report) *Kyushu J. Med. Sci.* 12:167-176, 1961. (Quoted by Toyama, T. in *Air Pollution and its Health Effects in Japan*. *Arch. Environ. Health* 8:161-181 (Jan.) 1964.)

<sup>16</sup> Suzuki, T.: Air Pollution and its health effects in Amagasaki City. Report of Air Pollution Control Committee of Amagasaki, 1962. (Quoted by Toyama, T. in *Air Pollution and its Health Effects in Japan*. *Arch. Environ. Health* 8:161-181 (Jan.) 1964.)

<sup>17</sup> Yancheva, N. Ya.: The effect of air pollution from power and chemical plants on health. *Gigiena i Sanitariya* 8:15, 1957. (Transl. by Levine, B. S. in *U.S.S.R. Literature on Air Pollution and Related Occupational Diseases*, Vol. 1, 1960, U.S. Dept. of Commerce, Office of Technical Services, Wash. 25, D.C.)

<sup>18</sup> Air Pollution in the Detroit-Windsor Area. Report of the Technical Advisory Board to the International Joint Commission United States and Canada. Washington. Ottawa. 1959.

<sup>19</sup> Hammer, D. I., et al: Los Angeles air pollution and respiratory symptoms. *Arch. Environ. Health* 10: 475-480 (Mar.) 1965.

<sup>20</sup> Zeldberg, L. D., et al: The Nashville air pollution study: I. Sulfur Dioxide and bronchial asthma—a preliminary report. *Am. Rev. Resp. Dis.* 84:489-503 (Oct.) 1961.

death rate in the area of highest pollution was nearly twice that in the lowest pollution area. This statistical relationship showed up even when allowance was made for age and socio-economic status of the deceased persons.

#### EFFECTS OF AEROALLERGENS

##### (1) *Bronchial asthma*

It is widely recognized that a number of airborne substances cause allergic responses in sensitized individuals. These substances, such as pollen, spores, rusts, and smuts, and known as aeroallergens, present a major public health problem.<sup>66</sup>

Bronchial asthma and allergic rhinitis, and more commonly known as hay fever, are typical human responses to exposure to aeroallergens. Pathological symptoms may be severe,<sup>67</sup> and the primary complications of bronchial asthma are numerous,<sup>68</sup> in extreme cases sometimes even leading to death.<sup>69</sup>

Aeroallergens are primary causative agents in inducing bronchial asthma. Estimates of the national incidence of this disease vary widely, but a recent study of the epidemiology of asthma and hay fever in a total community, Tecumseh, Michigan, indicates that 5 percent of the inhabitants had a medical history of asthma.<sup>70</sup> This and other studies indicate that many millions of persons in this country are or have been affected by this condition. For many of these it is a severe handicap.

Allergenic pollens come from trees, grasses, and weeds. Ragweed presents the most serious problem in the pollen allergy in the United States. Although found primarily in the central portion of the continent, infestation is developing in other areas. Other aeroallergens, such as spores from the mold *Alternaria*, are found in every State.

##### (2) *Allergic rhinitis*

Allergic rhinitis, or hay fever, is even more prevalent than bronchial asthma. Studies of university student populations since 1950 show an incidence of ragweed pollinosis as follows: in Indiana, 18.7 percent; in the State of Washington, 16.7 percent; and in Michigan, 19.2 percent.<sup>71</sup> The National Health Survey has estimated that about thirteen million persons throughout the country are being adversely affected by hay fever and/or asthma. Hay fever, unlike asthma, is rare in children under 10 years of age. The prevalence figure from the general population must therefore of necessity be smaller than the prevalence figure for selected young adult populations. The study of students mentioned above also shows that many foreign students develop ragweed pollinosis for the first time in their lives after a year or two of exposure to this potent aeroallergen. This fact has obvious public health significance when we consider that the ragweed plant appears to be migrating on this continent.

It might be thought that simple hay fever presents less of a hazard to health. Recent analyses indicate, however, that 5 to 10 percent of persons subject to allergic rhinitis will develop asthma if the disease runs unchecked.<sup>72</sup> There is therefore ample reason to be seriously concerned about the effects on our national health and well-being of aeroallergens in general and of ragweed pollinosis in particular. There is little doubt that our agricultural, highway construction, and suburban land developments, which leave so much bare soil on which ragweed thrives, are leading to a wider distribution of ragweed pollen and of the asthma which it causes.<sup>73</sup> There are a number of possibilities for controlling ragweed pollen and other aeroallergens. These control measures, however, are

<sup>66</sup> Hewson, E. W.: Atmospheric pollution in relation to microclimatology and micro-meteorology: Some problems. In: Proceedings of the Toronto Meteorological Conference 1953. Royal Meteorological Society, London, 1954, pp. 240-252.

<sup>67</sup> Vaughn, W. T., and Black, J. H.: Practice of Allergy, C. V. Mosby Co., St. Louis, 1954.

<sup>68</sup> Sheldon, J. M., et al: A Manual of Clinical Allergy. W. B. Saunders Co., Philadelphia, 1953.

<sup>69</sup> Rackemann, F. M.: Deaths from asthma. J. Allergy 15:249-258 (July) 1944.

<sup>70</sup> Broder, I. et al: The epidemiology of asthma and hay fever in a total community, Tecumseh, Michigan. I. Description of study and general findings. J. Allergy 33:513-523 (Nov.-Dec.) 1962.

<sup>71</sup> Maternowski, C. J., and Mathews, K. P.: The prevalence of ragweed pollinosis in foreign and native students at a midwestern university and its implications concerning methods for determining the inheritance of atopy. J. Allergy 38: 130-140 (March-April) 1962.

<sup>72</sup> Broder, I., et al: The epidemiology of asthma and hay fever in a total community, Tecumseh, Mich. II. The relationship between asthma and hay fever. J. Allergy 33: 524-531 (Nov.-Dec.) 1962.

<sup>73</sup> Wagner, W. R., Jr., and Beals, R. F.: Perennial ragweeds (*Ambrosia*) in Michigan with the description of a new intermediate taxon. Rhodora 60: 177-204, 1958.

administratively very complex; for example, they involve a change in agricultural practice wherein the farmers would spray the fields after the crop has been harvested. Such control methods should be evaluated and the effective ones adopted for use until such time as adequate immunochemical means of desensitization become available.

#### EFFECTS ON LABORATORY ANIMALS (EXCLUDING CANCER)

Laboratory research has provided important information concerning the effects of specific pollutants on animals. Mice, rabbits, guinea pigs, rats, and monkeys have been utilized to demonstrate the toxic properties of such air pollutants as sulfur dioxide, sulfuric acid, hydrogen sulfide, ozone, nitrogen dioxide, and some dusts.

In one recent experiment,<sup>72</sup> the respiratory response of guinea pigs inhaling low concentrations of acrolein was characterized by an increase in total respiratory flow resistance, accompanied by decreased respiratory rates and increased tidal volumes. The changes in respiratory function were reversible when the animals were returned to clean air. In another study of considerable relevance, conducted by Dr. Mary Amdur,<sup>73</sup> guinea pigs which had relatively higher initial flow resistance values, corresponding roughly to humans with respiratory disease, were exposed to an irritant aerosol or to an irritant gas. These animals showed a greater resistance than did control animals, particularly at the lower concentrations, at which the latter group had shown only a slight change. Animals which were exposed to both an inert aerosol and an irritant gas showed an enhancement of the effect over that shown by the irritant gas alone.

Other experiments with animals have shown that certain irritants common in polluted air can slow down, and even stop, ciliary activity in the air passages.<sup>74</sup> This impairment results in less effective cleansing of the mucus carpet of those air passages, and hence greater susceptibility to respiratory infection. A two-hour exposure of mice to as little as 3.5 parts per million of nitrogen dioxide significantly increased their susceptibility to respiratory infection initiated by challenge with an aerosol of *Klebsiella pneumoniae*. Infected animals exposed to 25 ppm of nitrogen dioxide for two hours showed an increased mortality rate and decreased survival time.<sup>75</sup>

Thus, information which has been obtained by artificial exposure of animals is providing some indexes of both human and animal effects to be expected from natural exposure.<sup>76</sup>

On the other hand, knowledge of the toxic potentialities of some air pollutants, such as peroxyacyl nitrates, ketenes, free radicals or radical formers, and air ions, is grossly incomplete and unsatisfactory. Similarly, only a beginning has been made in the more important area of toxicological interactions in which the presence of one air pollutant may, at one extreme, completely abolish the effects of another or, at the other extreme, enhance the effects out of all proportion to the toxicity of either alone.

#### RADIOACTIVE MATERIALS

In this brief survey of the part played by radioactive materials in the overall contamination of the atmosphere, no attempt will be made to cover the possible wartime use of nuclear devices and resultant civil defense requirements. Our concern here is rather with the increasing peacetime uses of all forms of ionizing radiation, and specifically with radioactive materials which are airborne.

##### (1) Sources

The sources of radioactive materials which may be present in our environment include: natural sources (radium and thorium in earth and cosmic rays); nuclear weapons testing (fallout); nuclear power production (waste disposal); nuclear fuel processing (waste disposal); and radioisotope use and disposal (industry and research).<sup>77</sup>

<sup>72</sup> Murphy, S. D., et al: Respiratory response of guinea pigs during acrolein inhalation and its modification by drugs. *J. Pharmacol. and Exp. Therap.* 141: 79-88 (July) 1963.

<sup>73</sup> Amdur, M. O.: The effect of high flow-resistance on the response of guinea pigs to irritants. 25:564-568 (Nov.-Dec.) 1964.

<sup>74</sup> Falk, H. L., and Kotin, P.: Chemical and biological considerations of atmospheric carcinogenic agents. *J. APCA* 7:12-14 (May) 1957.

<sup>75</sup> Purvis, M. R., and Ehrlich, R.: Effect of atmospheric pollutants on susceptibility to respiratory infection. II. Effect of nitrogen dioxide. *J. Infect. Dis.* 11: 72-76, 1963.

<sup>76</sup> Catcott, E. J.: Effects of air pollution on animals. In: *Air Pollution, SHO Monograph Series* no. 46, Geneva, 1961, pp. 221-231.

<sup>77</sup> Terrill, J. G. Jr.: Radiological Health Activities Related to Weapons and Missile Testing. A statement prepared for the Senate Committee on Public Works, Subcommittee on Air and Water, June 30, 1964.



The greatest source is from natural deposits of radioactive materials. The predominant component of radioactivity in air is the noble gas, radon-222, which is formed in the earth from decay of radium-226. A portion escapes to the atmosphere, where further decay results in a series of radioactive atoms which become a part of the normal atmospheric aerosol by attachment to other existing particles.

Great quantities of radioactive debris have been injected into the atmosphere by nuclear testing. Debris injected into the upper atmosphere remains for several months to years during which most of the radionuclides decay to insignificant concentrations, so that only the longer-lived nuclides, such as strontium-90 and cesium-137, enter the lower atmosphere. The debris injected into the lower atmosphere remains airborne long enough for the freshly formed fission products to be transported around the earth, contributing enroute to ground-level contamination. Fortunately, great dilution, washout in precipitation, and decay occur prior to population exposures, so that the probability of inhaling significant amounts has been slight. With the limited test ban treaty, this source has declined significantly. Radiation exposures from such radioactive fallout occur primarily from whole-body exposure from gamma-emitting nuclides deposited on the surface, and from radionuclides deposited in tissues through ingestion.

The processing, manufacturing, and use of nuclear fuels and radioisotopes, and the disposal of associated wastes, have incorporated engineering and procedural controls which have maintained these minimal sources. Several incidents at nuclear installations which have aroused concern appear to have been of the nature of industrial "accidents," and precautions have been taken to minimize the likelihood of their recurrence.

Inhalation has been recognized as a major, if not the most important, route of entry to the body of potentially hazardous materials for occupational exposures. Nonoccupational exposures may occur from external gamma radiation and ingestion, as mentioned above, as well as through inhalation.

## (2) Effects

A great deal is known about the effects on human beings of large doses of radiation—such as would be encountered in a nuclear war—but comparatively little about the effects of small doses of radiation, for example, natural background radiation and fallout from nuclear tests.<sup>73</sup>

The biological effects of radiation are either *somatic*, that is, occurring during the lifetime of the exposed organism, or *genetic*, the effects on germ cells. These effects depend on the type and quality of radiation and the quantity absorbed in tissues. Because of the difficulty of detecting effects of very low exposures, it is not known whether or not there is a "threshold" for any of the radiation effects; i.e., a dose below which there is no effect. There is some evidence from studies of experimental animals that suggests there is no "threshold" for genetic effect. If this is true for all effects, any amount of radiation causes damage, and the damage increases with increase in total cumulated exposure.

**Somatic Effects.**—The time of appearance of somatic effects is dependent on the magnitude of exposure. Following very large acute exposures, effects may appear within a few hours or less. Such early effects include central nervous system disorders, nausea, decrease in formed blood elements, intestinal disorders, and radiation burns. Longterm effects which may appear after many years from acute and chronic exposures, both large and small, include leukemia, bone and other cancers, cataracts, and overall shortening of life span.

**Genetic Effects.**—Genetic effects result from radiation damage to germ cell chromosomes, i.e., cell constituents responsible for transmitting characteristics from generation to generation. These effects can appear in subsequent generations. The effect may produce undetectable defects in the offspring; some may appear unspecifically as health impairments which may be minor or which may result in premature death or permanent serious illness. Studies with experimental mammals indicate that genetic damage increases with increase in exposure rate as well as total exposure.

Exposure in the U.S. population to fallout is slight compared to natural and other manmade health hazards. However, since the application of radiation-producing machines and materials, such as nuclear reactors, radioactive nuclides, and X-rays, will continue to increase in the future, radiation exposure will also

<sup>73</sup> United Nations. 1962. Report of the United Nations Scientific Committee on the Effects of Atomic Radiation. New York.

<sup>74</sup> National Academy of Sciences—National Research Council. The biological Effects of Atomic Radiation. Washington. 1956 and 1960 Reports.

increase. Any risk to the population should be commensurate with the benefit resulting from the use of nuclear energy. Guides have been established to assist in maintaining radiation exposures at reasonable levels.<sup>22, 23</sup>

### (3) *Relative importance as air pollutants*

To put the various sources of radiation exposure in some perspective, the Federal Radiation Council<sup>24</sup> estimates the radiation exposures to the U.S. population resulting from all past nuclear tests at 110 millirem (the conventional unit of measurement) for whole body exposure over a 80-year period and at 465 millirem for bone exposure over a 70-year period. These amounts are only 3 percent and 5 percent, respectively, of the corresponding figures (3,000 millirem and 9,000 millirem) for exposure to naturally occurring radioactive materials in the environment. Expressed in another way, the U.S. population having the highest exposure has received an exposure from the radioactive fallout of all past nuclear tests about equal to that from natural radiation in this country in one year. Of course, this exposure is *in addition* to that from natural sources.

1. *Pesticides*.—Airborne hazards from pesticides have largely been related to occupational exposure on the part of persons concerned with their application. There are some instances in which pesticides applied by aircraft have drifted from the intended area to another area, with troublesome consequences, but on the whole, the evidence of adverse effects on members of the general population from the inhalation of airborne pesticides is minimal.<sup>25</sup>

On the other hand, pesticides not only provide an example of the many new chemicals which in their production and use are potential air pollutants but also constitute a class of products which, by virtue of their toxicity and widespread use, require special consideration in any program to anticipate and ameliorate the harmful effects of atmospheric pollution.

Sales of organic pesticidal chemicals by primary producers increased 15.7 percent in 1961 and another 14.4 percent in 1962, when they amounted to \$346,441,000. In the report cited above, the President's Science Advisory Committee pointed to increasing volume of use, persistence of some chemicals in the environment, observed effects on wildlife, and indications that at least two insecticides are accumulating in man, as evidence of the need to obtain more data on the present levels of pesticides in our environment and to increase our efforts to understand their longterm effects.

### SULFUR OXIDES

The sulfur oxides that are of concern as atmospheric pollutants are sulfur dioxide, sulfur trioxide, and their acids and acid salts. Fossil fuels, such as coal and petroleum, contain elemental sulfur, and when the fuel burns, the sulfur is converted to sulfur dioxide and to a lesser degree, sulfur trioxide. Since fossil fuels are burned abundantly in the United States to heat buildings and to generate electric power, pollution of the atmosphere with the oxides of sulfur is widespread and is especially prevalent in cities. Petroleum refineries, smelting plants, coke processing plants, sulfuric acid manufacturing plants, coal refuse banks, and refuse burning activities are also major sources of sulfurous pollution.

### *Effects of Sulfur Oxides on Man*

The evidence is considerable that sulfur oxide pollution aggravates existing respiratory disease in humans and contributes to its development. Sulfur dioxide gas alone irritates the upper respiratory tract; adsorbed on particulate matter, the gas can be carried deep into the respiratory tract to injure lung tissue. Sulfuric acid when inhaled in a certain particle size can also deeply penetrate the lung to damage tissue.

In the documented air pollution disasters—Meuse Valley, Belgium, 1930; Donora, Pennsylvania, 1948; New York City 1953 and 1963; London, 1952 and 1962—large numbers of people became ill and many died. All episodes had common factors; they occurred in heavily industrialized areas during relatively brief

<sup>22</sup> Federal Radiation Council. Background Material for the Development of Radiation Standards. Washington. Report No. 1, 1960 and Report No. 2 1961.

<sup>23</sup> Federal Radiation Council. Background for the Development of Radiation Protection Standards. Washington. Report No. 5, 1964.

<sup>24</sup> Federal Radiation Council. Estimates and Evaluation of Fallout in the United States from Nuclear Weapons Testing Conducted Through 1962. Washington. Report No. 4, 1963.

<sup>25</sup> Interagency Coordination in Environmental Hazards (Pesticides): Hearings before the Subcommittee on Reorganization and International Organizations of the Committee on Government Operations, United States Senate, Part I (May, June 1963): U.S. Government Printing Office, Washington, 1964.

periods of anticyclonic weather conditions; and sulfur dioxide levels were excessively high as were levels of other gaseous and particulate pollution. Although the pattern of effects was not perfectly uniform in all these episodes, generally speaking, the elderly, the very young, and those with preexisting cardiorespiratory disease were most affected.

Epidemiological and clinical studies substantiate this evidence that certain portions of the population are more sensitive to sulfur oxide pollution. For examples: prolonged exposure to relatively low levels of sulfur dioxide has been associated with increased cardiovascular morbidity in older persons; prolonged exposures to higher concentrations of sulfur dioxide has been associated with an increase in respiratory disease death rates and an increase in complaints by school children of non-productive cough, mucous membrane irritation, and mucus secretion; the residual air in the lungs of emphysema patients has been significantly reduced when the patients breathed ambient air that had been filtered of pollutants; and the most important single factor to correlate (inversely) with the feeling of well-being in chronic bronchitis patients has been the level of smoke and sulfur dioxide pollution.

Sulfur oxides pollution can also adversely affect the more robust portions of the population. Experiments in which healthy human volunteers were exposed to sulfur dioxide concentrations several times higher than the taste threshold concentration indicate that such exposures will produce pulmonary function changes including increased respiration rates, decreased respiratory flow rates, and increased airway resistance. The impairment of function is greater when the sulfur dioxide gas is administered together with particulate matter.

In other experiments in which healthy human subjects were exposed to sulfur fur oxides, effects were observed but a complete interpretation of effects could not be made; for examples, concentrations of sulfur dioxide below the taste threshold produced cortical conditioned reflexes, and concentrations at the taste threshold desynchronized the predominant wave in electroencephalograms and increased the sensitivity of the dark adapted eye.

#### *Clinical-epidemiological studies on humans in community atmospheres*

Clinical-epidemiological studies on the acute and chronic effects of community atmospheres containing oxides of sulfur at various concentrations have been undertaken by numerous investigators. It should be noted that these atmospheres contained other pollutants as well and, that although sulfur dioxide is the measure of sulfurous pollution in the studies, also present were an undetermined amount of sulfuric acid mist and sulfate salts. It has been shown by numerous investigators that the effects related to a given amount of sulfur dioxide in community air can be expected to be greater than in laboratory experiments in which sulfur dioxide was the only pollutant.

Spicer made daily observations over a period of several weeks of air pollution and pulmonary function of a group of normal individuals and a group of subjects with chronic obstructive airway diseases. In general the airway resistance and other measures of pulmonary function of the two groups changed together from week to week, and persons within either group changed together from day to day. An analysis of individual persons revealed that some responded to changing concentrations of one component of air pollution, others responded to changing concentrations of another component, and still others responded to many things. The data seem to indicate increasing airway resistance in patients with chronic obstructive lung diseases when exposed to as little as 0.05 parts per million (ppm) sulfur dioxide in ambient air. Sulfur dioxide concentrations averaged over 2-hour periods ranged from nearly zero up to 0.5 ppm during the period of the study. Further studies are needed to substantiate these observations.

Lawther and Waller and Pemberton studied groups of patients with chronic bronchitis over several winters. Lawther's group consisted of about 1000 patients with established bronchitis who recorded daily whether they felt better or worse than on the preceding day. The percentage of those who felt worse than on the preceding day was then calculated. Fluctuations in this index followed closely the daily variations in air pollution, and when smoke rose above 300  $\mu\text{g}/\text{m}^3$  and sulfur dioxide above 0.21 ppm the health of the group deteriorated. The authors concluded that air pollution as measured by smoke and sulfur dioxide was the most important factor affecting the day to day well-being of the subjects.

McCarroll, et al studied a large number of families (approximately 1000 people) in New York City and correlated the symptoms of upper respiratory tract and eye irritation with sulfur dioxide concentrations. In two air pollution episodes occurring in the period November through December of 1963, in which the daily average sulfur dioxide concentration exceeded 0.2 ppm for 4 days and reached maximum 1 to 2 hour average concentrations of 0.9 to 1.5 ppm, there were significant increases in the incidence of rhinitis, sore throat, cough, and eye irritation.

Anderson and Ferris found that, after controlling for age, height, sex, and smoking habits, one second forced expiratory volume and Wright peak expiratory flow rates were greater for persons living in a town with less pollution (0.05 mg sulfur trioxide/100 cm<sup>3</sup>/day; 10 tons/mi<sup>2</sup>/mo dustfall) than for persons living in a more polluted town (0.4 mg sulfur trioxide/100 cm<sup>3</sup>/day; 35 tons/mi<sup>2</sup>/mo dustfall). In both towns air pollution was measured only during August and September, months of generally low pollution in the United States and Canada.

Prindle, et al observed greater airway resistance in persons who lived in the more heavily polluted of two towns where sulfation rates (3.7 mg sulfur trioxide/100 cm<sup>3</sup>/day) and dustfall (83 tons per square mile per month) were respectively 6.2 and 3.2 times greater in the one town than the other. Gaseous sulfur dioxide averaged 0.09 and 0.01 ppm in the high and low polluted towns respectively. The major source of pollution was a coal fired power plant.

#### *Epidemiologic studies of morbidity within cities*

Diseases which seem to be of the most concern from the standpoint of sulfur oxides pollution are chronic bronchitis and/or chronic disabling respiratory diseases, cardiac diseases, and respiratory diseases due to infection.

Martin studied daily hospital admissions in London during the periods 1958 to 1959 and 1959 to 1960. The hospital admissions were separated into three categories: (1) diseases from all causes; (2) cardiac diseases, and (3) respiratory diseases. For each category a daily morbidity index was determined as the deviation in number of admissions from the 15 day moving average. The separate daily morbidity indexes were then correlated with daily measures of smoke and sulfur dioxide. Correlation coefficients of morbidity from all causes with smoke and sulfur dioxide were significant only in 1958 to 1959. Correlation coefficients of respiratory morbidity with smoke and sulfur dioxide were essentially equal—0.25 in 1958 to 1959 and 0.34 in 1959 to 1960. Correlation coefficients of cardiac diseases with smoke were 0.28 in 1958 to 1959 and 0.22 in 1959 to 1960; with sulfur dioxide they were 0.20 in 1958 to 1959 and 0.23 in 1959 to 1960.

Burn and Pemberton observed that up to four times as many bronchitis attacks were reported than were expected during five smog periods in Salford, England during 1958. Daily average sulfur dioxide concentrations during these periods were between 0.5 and 1 ppm, and daily average smoke concentrations were above 1 mg/m<sup>3</sup>. During the year period, bronchitis attacks ranged from 130 percent of expectation in the most severely polluted area to 60 percent in the least polluted area. Average daily sulfur dioxide concentrations in the more heavily polluted areas were approximately 0.25 ppm; in the less polluted areas average daily sulfur dioxide concentrations were approximately 0.10 ppm. Average daily smoke values were approximately 500 µg/m<sup>3</sup> in the more severely polluted areas and 350 µg/m<sup>3</sup> in the less polluted areas.

In a Detroit, Michigan/Windsor, Ontario study, greater morbidity was observed in areas with higher pollution than in areas with lower pollution. Sulfur dioxide concentrations were about twice as high in the more polluted areas (0.04 to 0.10 ppm annual average) as in the lesser polluted areas. In the more highly polluted areas suspended particulates were found to be 1.2 to 1.3 times greater (193 to 281 µg/m<sup>3</sup> annual average) than in the lesser polluted areas. As absolute differences in pollution between otherwise comparable areas increased, greater increases in sickness rate between the areas were noted.

Zeldberg, et al studied morbidity among 9,313 individuals in 2,833 households in Nashville, Tennessee. The major part of the analysis was confined to the middle socioeconomic class households representing 6,393 individuals. A direct correlation between morbidity and pollution could not be shown with any consistency except for those 55 years of age or older. In this older age group cardiovascular morbidity among the white population progressed as either the soiling index or sulfur dioxide concentration in the residential area increased. Cardiovascular morbidity was approximately twice as high in the

most polluted areas (annual average—Cohs 0.881 or more, sulfur dioxide 0.01 ppm or more) as in the least polluted areas (Cohs 0.330 or less, sulfur dioxide 0.005 ppm or less). The annual averages are geometric means which can be approximately converted to arithmetic means by multiplying by 1.5. Relationships between air pollution and morbidity rates for cancer, respiratory diseases, and gastrointestinal diseases could not be demonstrated.

#### *Epidemiologic studies of morbidity between cities*

Dohan studied the incidence of respiratory illnesses lasting more than 7 days in female employees in 5 cities. The results of this study showed a very high correlation (0.964) of the average concentration of suspended sulfate in the air in these cities with the rate of respiratory illnesses. The average sulfate concentrations for the cities ranged from 5 to 20  $\mu\text{g}/\text{m}^3$ . During the noninfluenza epidemic years the incidence of respiratory disease was more than twice as great in the city with the highest surface concentration as in the city with the lowest sulfate concentration.

The incidence of total respiratory disease during the 1957 to 1958 Asian influenza epidemic was greater than in the same cities during non-epidemic years. In the city with the lowest concentration of suspended sulfates there was approximately a 20 percent increase in the incidence of respiratory illness during the epidemic year, whereas, in the city with the highest concentration of suspended sulfate there was approximately a 200 percent increase in the incidence of respiratory illness. During the influenza year the incidence of respiratory diseases in the city with the highest pollution was more than 5 times as high as in the city with the least pollution. The author could not demonstrate correlations between respiratory disease rates and the mean concentrations of benzene soluble organic matter, acetone soluble organic matter, nitrates, copper, or zinc. However, the mean concentrations of nickel and vanadium (measured in 4 cities) increased along with increase in incidence of respiratory disease.

#### *Epidemiologic studies of morbidity associated with air pollution episodes*

Increased illness rates associated with the acute air pollution episodes which occurred in the Meuse Valley in 1930, Donora in 1941, New York City in 1953 and 1962, and London in 1952 and 1962, and in which high concentrations of sulfur oxides were present have been reported.

In the Meuse Valley, Belgium during a period of anticyclonic weather in December, 1930, a dense fog enveloped the valley. By the third day many of the residents developed throat irritation, hoarseness, productive and non-productive cough, shortness of breath, and sense of chest constriction. Some individuals also developed nausea and vomiting. The most severely affected were elderly people and individuals who had previous cardiorespiratory disease. No measurements of air pollution were made at the time of the episode, but subsequent investigations indicated that the oxides of sulfur were the principle irritant.

In Donora, Pennsylvania in October, 1948 a similar meteorological condition occurred which lasted 4 days. By the third day 42.7 percent of the population (5910 persons) developed mild to severe symptoms of irritation characterized by burning of the eyes, tearing, nasal discharge, sore throat, non-productive cough, nausea, vomiting, and diarrhea. No age group was spared but the incidence rate of illness increased with age. Regardless of age the most sensitive individuals were those with pre-existing heart and lung disease. Retrospective studies indicated that sulfur dioxide levels may have reached 0.5 to 2.0 ppm and that large numbers of other airborne particulates and gases were present.

Ciocco and Thompson restudied the Donora population 10 years after the incident. Among the persons surviving in 1957 who could be questioned (80 percent of the total study group) there was no evidence that those who smoked tobacco in any form prior to October, 1948 became ill during the episode at a higher rate than those who did not smoke. The essential findings were that persons who reported acute illness at the time of the smog episode subsequently demonstrated higher mortality and higher prevalence of illness than the other persons living in the community at that time.

Abercrombie reported that the normal number of weekly applications for emergency bed service during the month of December in London was approximately 1000. In 1952 when a severe smog developed between December 5 and December 9 the weekly total number of applications was more than 2500. The increase in illness was larger in cardiorespiratory disease. The illness rate did not return to the normal statistical rate for approximately 2 to 3 weeks. Sulfur

dioxide measurements during the smog reached peak levels of 1.3 ppm and the general average during the episode was 0.7 ppm.

Greenburg, et al. reported that during the period of high air pollution in New York City in November, 1963 pediatric and adult clinic visits for upper respiratory illnesses and cardiac diseases rose above normal in all of the 4 hospitals studied. Sulfur dioxide ranged between 0.07 ppm and 0.66 ppm from November 12 to November 24, and hospital admissions were clearly elevated by November 16 at which time concentrations had not exceeded 0.25 ppm.

From November 27 through December 4, 1962 a condition of atmospheric stability occurred in New York City during which sulfur dioxide concentrations ranging up to 1.4 ppm and Coxs values ranging up to 9 were observed. Greenburg, et al. studied visits during this period for upper respiratory infections, cardiac conditions, and asthma at five emergency clinics in the major city hospitals, four old-age homes, an employee clinic at the Chase National Bank, and visits recorded by the Blue Shield Health Insurance Plan. The average daily visits at each of the installations were compared with the period prior to and subsequent to December 1 through 7. No significant change was found in the records of any of the facilities with the exception of the four old-age homes. A significant rise in upper respiratory illness was found in all 4 of the old-age homes, and the incidence of illness did not return to normal until after December 14.

Acute illnesses then, of epidemic magnitude developed after 24 hour average sulfur dioxide concentrations of approximately 0.5 ppm, during which peak hourly averages of 0.75 ppm or more occurred, and when suspended particulate matter concentrations of 1000  $\mu\text{g}/\text{m}^3$  or higher or when Coxs values of 8 or more were attained. Increased hospitalization and outpatient clinic visits were primarily attributed to cardiorespiratory illnesses. In severe episodes accompanied by fog, nausea and vomiting occurred in addition to the usual symptoms of respiratory irritation. Secondary complications frequently develop in individuals of all age groups, but the elderly individuals and the individuals with preexisting cardiorespiratory disease are especially susceptible. From one study it was determined 10 years after the episode that individuals who became ill during the outbreak had a less favorable morbidity and mortality experience than those who were not so affected.

#### *Epidemiologic studies of deaths among cities*

Studies of differences in death rates between different cities of the United States as they relate to air pollution have not been made. However, several such studies have been made in England. Very high correlations have been obtained between various measures of air pollution containing sulfur oxides and respiratory disease deaths. Bronchitis death rates relate strongly to indices of air pollution from domestic coal consumption, lead peroxide candle sulfation rates, and to pH of the precipitation. Pneumonia death rates increase from 40 per 100,000 to 60 per 100,000 as sulfate in the dustfall increases from 1.4 to 7 tons/ $\text{mi}^2/\text{mo}$ . Bronchitis death rates increase by a factor of about 1.5 as lead peroxide candle sulfation rates increase from 0.75 to 2.25  $\text{mg}/100 \text{ cm}^2/\text{day}$ .

#### *Epidemiologic studies of deaths during air pollution episodes*

Numerous reports of increased deaths during air pollution episodes exist. In London, annual average sulfur dioxide concentrations are about 0.10 ppm, but fogs are frequent, and air pollution episodes occur in varying degrees almost every year. In the most notable episode, that occurring in 1952, there were 4000 excess deaths. During this episode sulfur dioxide averaged 0.7 ppm during the 4-day period and reached a peak of 1.3 ppm for a "short period". In the United States only a few such incidences have been recorded, but an intensive search for their occurrence has not been made.

In the 4 day air pollution episode at Donora, Pennsylvania in October, 1948, 17 persons died on the third day and 3 other deaths were ascribed to fog. Normally at Donora in the period 1948 to 1948 about 100 persons died per year or 1 person every third day. The ages of the 20 persons who died during the episode ranged from 52 to 84 years. Pre-existing disease of the cardiorespiratory system appeared as a single factor among the fatally ill, although in four cases no history of any chronic disease was obtained. Autopsies of three persons who died during the smog showed acute changes in the lungs characterized by capillary dilation, hemorrhage, oedema, purulent bronchitis, and bronchiolitis. Chronic cardiovascular disease was a prominent feature in the autopsies.

Only in the degree of severity and in the outcome were fatal cases different clinically from the severely ill persons who did not die.

In the air pollution episode occurring in November, 1953 at New York City the average number of deaths per day in the period November 15 to November 24 was 244, whereas the averages for 6 control years ranged from 218 to 227. The increase was generally distributed over all age groups and all causes of deaths except accidents, homicides, and suicides.

Existing data, then, indicate that excess deaths may occur in United States cities with annual average sulfur dioxide concentrations of 0.05 ppm or more when periods of pollution buildup occur, or during stagnation periods of 3 or more days in which peak instantaneous concentrations of 1 ppm or  $\frac{1}{2}$  hour average concentrations of 0.8 ppm occur. Deaths are not limited to any particular group but certain groups, including those with preexisting heart, circulatory, or respiratory diseases, and infants and the elderly are certainly affected.

#### Selected References

1. A comprehensive listing of references to, and abstracts of, scientific reports on sulfur oxide pollution and its effects on health and welfare is contained in "Sulfur Oxides and Other Sulfur Compounds: A Bibliography with Abstracts," Public Health Service Publication No. 1093, U.S. Department of Health, Education, and Welfare, Washington, D.C., 1965. A selection of important references follows.
2. Greenburg, L., Jacobs, M. B., Field, R., Braveman, M. M. and Drolette, B. M. Air pollution and health. Report of an incident in New York City during November, 1953. Public Health Reports. 77:7-16. Jan. 1962.
3. Firket, J. The cause of the symptoms found in the Meuse Valley during the fog of December, 1930. Bull. Royal Acad. Med. Belgium. 11:683. 1931.
4. Schrenk, H. H., Helmann, H., Clayton, G. D., Gafafer, W. M. and Wexler, H. Air pollution in Donora, Pa. Pub. Health Bull. No. 306. Federal Security Agency. Washington, D.C., 1949.
5. Spicer, W. S. The complexity of the relationship between air pollution and respiratory health. Proceedings of the National Conference on Air Pollution. December 10-12, 1962. PHS Pub. No. 1022.
6. Rohrman, F. A. and Ludwig, J. H. Sources of sulfur dioxide pollution. Presented at the 55th National Meeting Amer. Inst. of Chem. Eng., Houston, Texas, Feb. 7-11, 1965. Session No. 46. Paper No. 46e. pp. 1-16.
7. Greenburg, L. and Jacobs, M. B. Sulfur dioxide in New York City atmosphere. Ind. Eng. Chem. 48:1517-1521. 1956.
8. Helmann, H. Effects of air pollution on human health. In: Air Pollution. WHO Monograph Series No. 46. Col. Univ. Press. 1961. pp. 159-220.
9. Goldsmith, J. R. Effects of air pollution on humans. In: Air Pollution. Vol. I. Stern, A. C., ed. Acad. Press, New York. 1962 pp. 335-396.
10. Lawther, P. J., Martin, A. E. and Wilkins, E. T. Epidemiology of air pollution. WHO Pub. Health Papers, No. 15, Geneva. 1962.
11. Catcott, E. J. Effects of air pollution on animals. In: Air Pollution. WHO Monograph Series No. 46. Col. Univ. Press. 1961 pp. 221-231.
12. Farber, S. M. and Wilson, R. H. L. Air contamination: A respiratory hazard. J. AMA. 180:362-366. May 5, 1962.
13. Goldsmith, J. R. Effects of air pollution on man. Connecticut Medicine. 27:455-464. Aug. 1963.
14. Prindle, R. A. and Landau, E. Health effects from repeated exposure to low concentrations of air pollutants. Public Health Reports. 77:901-906. Oct. 1962.
15. Anderson, R. J. Epidemiologic studies of air pollution. Dis. of the Chest. 42:474-480. Nov. 1962.
16. Spicer, W. S., Jr., Storey, P.B., Morgan, W. K. C., Kern, H. D. and Standiford, N. E. Variation in respiratory function in selected patients and its relation to air pollution. Am. Rev. Resp. Dis. 86:705-712. Nov. 1962.
17. Waler, R. E. and Lawther, P. J. Some observations on London fog. Brit. Med. J. 2:1356. 1955.
18. Pemberton, J. Air pollution as a possible cause of bronchitis and lung cancer. J. Hyg. Epidemiol. Microbiol. Immunol.
19. McCarrroll, J. R., Cassell, E. J., Ingram, W. and Wolter, D. Health and the urban environment. Arch. Environ. Health. 10:357-363. Feb. 1965.
20. Motley, H. L., Smart, R. H. and Leftwich, C. I. Effect of polluted Los Angeles air on lung volume measurements. J. AMA. 171:1469-1477. Nov. 1959.

21. Anderson, D. O. and Ferris, B. G. Air pollution levels and chronic respiratory disease. *Arch. Environ. Health.* 10:307-311. Feb. 1965.
22. Prindle, R. A., Wright, G. W., McCaldin, R. O., Marcus, S. C., Lloyd, T. C. and Bye, W. E. Comparison of pulmonary function and other parameters in two communities with widely different air pollution levels. *Am. J. Public Health.* 53:200-218. Feb. 1963.
23. Heiman, H. Air pollution and respiratory disease. PHS Pub. No. 1257. 1964.
24. Phillips, A. M. The influence of environmental factors in chronic bronchitis. *J. Occupat. Med.* 5:468-475. Oct. 1963.
25. Zeidberg, L. D., Prindle, R. A. and Landau, E. The Nashville air pollution. *AM. J. Public Health.* 54:85-97. 1964.
26. Dohan, F. C. Air pollutants and incidence of respiratory disease. *Arch. Environ. Health.* 3:387-395. Oct. 1961.
27. Greenburg, L., Field, F., Reed, J. I. and Ehrhardt, C. L. Air pollution and morbidity in New York City. *J. AMA.* 182:161-164. Oct. 13, 1962.
28. Greenburg, L., Field, F., Erhardt, C. L. and Reed, J. I. Air pollution incidents and morbidity studies. *Arch. Environ. Health.* 10:351-356. Feb. 1965.
29. Zeidberg, L. D., Horton, R. J. M. and Landau, E. The Nashville air pollution study: V. Mortality from diseases of the respiratory system in relation to air pollution. Presented at the Am. Public Health Assoc., 91st Annual Meeting, Kansas City, Missouri. 1963.
30. Wilkins, E. T. Air pollution. Some chemical and physical aspects of its effects on living material. In: *The Effects of Air Pollution on Living Material.* Symposia of Biology. 8:71-80. The Institute of Biology. London. 1959.
31. Wilkins, E. T. Air pollution and the London fog of Dec. 1952. *J. Royal Sanit. Inst.* 47:1-15. 1954.
32. Scott, J. A. The London fog of December, 1962. *Med. Officer (London).* 109: 250-252. April, 1963.
33. Prindle, R. A. Notes made during London smog in December, 1962. *Arch. Environ. Health.* 7:493-496. Oct. 1963.

#### OXIDANTS

Oxidants are a major class of compounds found in photochemical smog—a major air pollution problem arising from atmospheric reactions of gases derived from the combustion of organic fuels. Emissions from motor vehicles are a prime factor in the formation of photochemical smog in virtually all parts of the country. Other factors which contribute to smog formation are the combustion of fuels for heat and electric power, burning of refuse, evaporation of petroleum products, and handling and use of organic solvents. The principal identifiable oxidants in polluted urban air are ozone, the peroxyacyl nitrates (PAN), and the oxides of nitrogen, primarily nitrogen dioxide.

#### *Effects of photochemical smog on man*

**Eye Irritation.**—The most commonly experienced effect of photochemical smog is eye irritation. The components causing eye irritation have not been completely identified, but there is some correlation between the occurrence of eye irritation and overall levels of oxidant in the atmosphere. Eye irritation is generally experienced at community oxidant levels of 0.1 parts per million (ppm) and higher.

**Odor.**—There is a characteristic pungent odor associated with photochemical smog. Ozone is an acrid component of this odor.

**Respiratory Effects.**—Studies have shown that it is harder for humans, particularly patients suffering from chronic respiratory disease, to breathe in areas having even a moderate level of photochemical air pollution (0.10 ppm total oxidant or higher). In clinical studies of patients with chronic broncho-pulmonary disease exposed to the ambient Los Angeles smog for one week (when compared to the effects on the same patients breathing filtered air for a similar period), the most significant and uniform effect of photochemical smog exposure was an increase in oxygen consumption and a decrease in oxygen content in the blood (decrease in arterial blood oxygen tension levels) during light exercise. Thus, while the patients were consuming more oxygen, less of it was being made available to the body. There also was greater difficulty in breathing (increased pulmonary airway resistance) in the patients when breathing the smoggy air.



### *Effects of photochemical smog in animals*

**Short-term Effects.**—Studies on guinea pigs exposed over their lifetime to atmospheric photochemical smog showed that the animals experienced greater difficulty in breathing on days of high photochemical air pollution levels. Even more significant increases in breathing resistance, particularly in the older animals, occurred on days having severe smog.

**Long-term Effect.**—Laboratory mice exposed to community photochemical smog levels over a 18-month period showed an increase in lung tumors (adenomas) in the aging animals when compared to the controls exposed to filtered air.

Several strains of young laboratory mice, 5-8 weeks old, when chronically exposed continuously to low levels of synthetic smog (irradiated auto exhaust cycled within test chambers to simulate the daily oxidant fluctuation pattern occurring in ambient air) showed increased susceptibility to pulmonary infection and chronic disease during the latter half of the animals' lifetime compared to controls exposed only to clean filtered air. Significant decreases in mouse fertility and survival rate of infant mice were also manifested during the 18-month exposure period (through the animals' effective reproductive period).

### *Effects of ozone on man*

**Odor.**—The characteristic sharp odor of ozone, sometimes described as an "electrical" odor, can be detected instantaneously at very low concentrations (0.02-0.05 ppm), depending on individual acuity. At somewhat higher concentrations (0.05-0.10 ppm) the odor becomes more pronounced and disagreeable.

**Respiratory Effects.**—Ozone is a severe irritant to all mucus membranes. Significant exposures may cause pulmonary congestion and other complications. The first symptoms of irritation due to ozone, dryness of the upper respiratory passages and initial irritation to the mucous membranes of the nose and throat, occur after brief exposures (13-30 minutes) to low concentrations (0.05-0.10 ppm). At higher concentrations (0.30-1.0 ppm, all within the recorded range of community oxidant levels) and after somewhat longer exposure (15 minutes-2 hours), there is marked respiratory irritation accompanied by respiratory distress (choking, coughing and severe fatigue, particularly at the upper end of this range). At relatively high concentrations, such as found in severe photochemical smog, lung function is impaired for the duration of exposure and beyond. Based on a laboratory study of exposure of normal subjects to 0.6-0.8 ppm ozone for a single 2-hour period, there was a marked change in lung function (highly significant reduction in diffusing capacity and significant reduction in vital capacity and forced expiratory volume) lasting up to 24 hours. Bronchial irritation and subternal soreness also lasted up to 12 hours, while slight coughing lasted up to 24 hours. At still higher concentrations, beyond the highest levels found in community photochemical smog (1.5-2.0 ppm), a single 2-hour exposure to ozone caused general morbidity in a man lasting for approximately two weeks after a single two-hour exposure. His immediate symptoms included impaired lung function, severe chest pains, altered taste sensation, coughing, headache and extreme fatigue. During the period of severe malaise following exposure, the subject also showed a loss of coordinating ability and difficulty in expression and articulation.

**Effects on Vision.**—Humans exposed to significant levels (0.20-0.50 ppm for 3 hours) showed a considerable decrease in visual acuity and changes in the extra ocular muscle balance, night-vision, lateral phoria, and other visual effects.

**Long-term Effects.**—Few long-term studies of ozone exposure of humans have been reported. Chronic occupational exposures to intermittently and relatively high concentrations of ozone (0.5-1.2 ppm averages) over a two-week period caused severe recurrent headache, fatigue, chest pains, difficulty in breathing and wheezing.

### *Effects of ozone on animals*

**Short-term Effects.**—A concentration of 0.10 ppm ozone for 3 hours causes an increase in mortality of test animals over similarly infected animals not exposed to ozone. Concentrations of ozone (comparable to commonly found atmospheric levels) also cause a decreased activity in mice (decreased running ability after exposure to 0.20 ppm for 6 hours), while ozone levels of 0.34 ppm and above for 2 hours caused temporarily impaired lung function. At ozone concentrations well above present community levels (1.50 ppm and above), pathological lung changes occurred after single 4-hour exposures which apparently were reversible after withdrawal from the ozone environment.

**Long-term Effects.**—Continuous ozone exposure for 3–17 weeks at concentrations of 0.10–0.25 ppm shortened the lives of infected guinea pigs and increased their mortality rate, while discontinuous long-term exposures (0.10–0.20 ppm for 7 hours/day, 5 days/week for 3 weeks) caused an increase in the mortality of new-born mice. Significantly increased mortality and severe chronic lung injury including hemorrhage, fibrosis of the lung parenchyma and constriction of the lung airways occurred in guinea pigs and rats when discontinuously exposed to ozone concentrations of 1.50 ppm for 62 weeks.

**Effects of PAN on animals and men**

The use of PAN compounds in animals or human exposures is only quite recent and thus little information has been developed. No apparent evidence of pronounced injury to animals exposed to PAN in concentrations approximating atmospheric levels has been observed to date. PAN, however, did cause eye irritation when panels of human volunteers were exposed to pure synthetic PAN at a concentration of 1 pm for 10–15 minutes; the threshold of detection of PAN is approached at 0.5 ppm for 12 minutes.

PAN appears to have an effect on pulmonary function of humans similar to that reported above for oxidant. In a recent study, it was found that healthy students when performing moderate exercise and breathing 0.30 ppm PAN for 5 minutes showed a statistically significant increase in oxygen uptake compared to an identical period when they were breathing clean filtered air; breathing also was affected.

**Selected References**

1. Haagen-Smit, A. J.: Chemistry and Physiology of Los Angeles Smog. *Ind. Eng. Chem.* 44: No. 6, 1342, June 1952.
2. Haagen-Smit, A. J.: Photochemistry and Smog. *J. Air Poll. Cont. Assn.* 13: No. 9, 444, September, 1963.
3. Stephens, E. R., Darley, E. F., Taylor, O. C., and Scott, W. E.: Photochemical Reaction Products in Air Pollution. *Int. J. Air Water Poll.* 4: Nos. 1–2, 79, 1961.
4. Mittler, S., King, M., and Burkhardt B.: Toxicity of Ozone. III. Chronic Toxicity. *Arch. Ind. Health.* 15: 191, March 1957.
5. Murphy, S. D., Ulrich, C. E., Frankowitz, S. H., and Xintaras, C.: Altered Function in Animals Inhaling Low Concentrations of Ozone and Nitrogen Dioxide. *Am. Ind. Hyg. J.* 25: 246, May-June 1964.
6. McDonnell, H. B.: Experiments with Ozone on Guinea Pigs. *J. Ass. Off. Agric. Chem.* 13: 19, 1930.
7. Smith, L. E.: Peroxyacetyl Nitrate Inhalation. *Cardiorespiratory Effects.* *Arch. Envir. Health.* 10:161, February 1965.
8. Scheel, L. D., Dobrogorski, O. J., Mountain, J. T., Svirbely, J. L., and Stokinger, H. E.: Physiologic, Biochemical, Immunologic, and Pathologic Changes Following Ozone Exposure. *J. Appl. Physiol.* 14: No. 1, 67, January 1959.
9. Lagerwerff, J. M.: Prolonged Ozone Inhalation and its Effects on Visual Parameters. *Aerospace Medicine.* 34: No. 6, 479, June, 1963.
10. Brinkman, R., Lamberts, H. B., and Veninga, T. S.: Radiometric Toxicity of Ozonised Air. *The Lancet.* 7325:133, January 18, 1964.
11. Balchum, O. J., Buckley, R., Levey, S., Bertolino, J., Swann, H., and Hall, T.: Studies in Experimental Emphysema. *Arch. Envir. Health.* 8: No. 1, 132, January, 1964.
12. Spicer, W. S., Jr.: Relation of Air Pollution to Disease. *Arch. Envir. Health.* 9: No. 5, 600, November, 1964.
13. Remmers, J. E., and Balchum, O. J.: Effects of Los Angeles Urban Pollution Upon Respiratory Function of Emphysematous Patients. Paper No. 65-43. Presented at the 58th Annual Meeting, Air Pollution Control Association, Toronto, Canada, June 1965.
14. Swann, H. E., Brunol, D., Wayne, L. G., and Balchum, O. J.: The Acute Effects of Los Angeles Smog on the Respiration of Guinea Pigs. *Arch. Envir. Health.* In press.
15. Heuter, F. G., Contner, G. L., Busch, K. A. and Hinnners, R. G.: Biological Effects of Atmospheres Contaminated by Auto Exhaust. *Arch. Env. Health.* In press.
16. Schoettlin, C., and Landau, E.: Air Pollution and Asthmatic Attacks in the Los Angeles Area. *Public Health Reports.* 76: 545, June 1961.

**CARBON MONOXIDE**

Carbon monoxide is one of the most common of all urban air pollutants and one of the most harmful to man. Its ability to impede the oxygen-carrying capacity of the blood makes it lethal in high concentrations. In the passenger compartment of motor vehicles in traffic, it may reach levels sufficiently high to interfere with man's driving ability and thus pose a safety hazard in virtually any community, regardless of the extent of ambient air pollution. Though all processes involving combustion of carbonaceous material produce carbon monoxide, the motor vehicle is by far the most important source from which this pollutant gas reaches the atmosphere. The wide use of motor vehicles, coupled with the fact that they discharge pollutants from points close to the ground, makes them the prime contributor to most people's daily exposure to carbon monoxide. Federal standards to control carbon monoxide emissions from new motor vehicles have been established and will be effective beginning with 1968 model cars and light trucks.

***Effects of carbon monoxide on man***

Carbon monoxide poisoning is a well understood phenomenon. As with many other harmful gases, the degree of damage which man sustains as a result of exposure to carbon monoxide is related to the concentration of the gas in inhaled air and the length of exposure. The hazards of carbon monoxide arise mainly from its strong affinity for hemoglobin, which carries oxygen to body tissues. The effect of carbon monoxide combining with hemoglobin is to deprive the tissues of needed oxygen. At concentrations of slightly more than 1,000 ppm, carbon monoxide kills quickly. Fifty parts per million is now recommended as the upper limit of safety for healthy industrial workers exposed for an eight-hour period. At approximately 100 ppm, most people experience dizziness, headache, lassitude, and other symptoms.

There are many factors which cause a greater susceptibility than the average. Drinker has pointed out that any impairment in circulation, heart disease in any form, anemia, asthma, lung impairment, any condition that speeds metabolism, any increase in activity, high temperature, high humidity, and high altitude are conducive to making certain persons particularly vulnerable to carbon monoxide exposure.

In adopting its "serious" levels of standards for carbon monoxide in 1960, the California Department of Public Health indicated that exposure to 30 ppm of carbon monoxide for eight hours, or exposure to 120 ppm for one hour, may be a serious risk to the health of sensitive people. These levels were based on the assumption that such exposures would result in the inactivation of five percent of the body's hemoglobin. At these levels, there were cognitive and psychomotor capability deficits. The degree of impairment increased with the ambient carbon monoxide level and the carboxyhemoglobin level in the blood become higher if the subject was smoking or was a chronic general smoker.

At high levels of concentration, carbon monoxide, more than any other air pollutant, has been identified as a participant in synergistic reactions. For example, the combined effect of carbon monoxide in the presence of hydrogen sulfide or nitrogen dioxide is more severe than the sum of the effects of each of the gases. At low levels, synergism has not been established; however, carbon monoxide with other pollutants probably has an additive effect.

***Clinical-epidemiological studies***

A substantial part of existing scientific information on the effects of carbon monoxide has come from clinical studies of healthy adult males. Thus, in 1929, men were exposed in a chamber from 4 to 7 hours daily, for 68 days, to gasoline engine exhaust containing 200, 300, and 400 ppm of carbon monoxide. At 200 ppm, carboxyhemoglobin reached 25 percent in 5 or 6 hours; more than one-half the subjects experienced no symptoms at all, the remainder suffering slight discomfort in 2 hours and frontal headache in 4 hours. At 300 ppm and at 400 ppm, carboxyhemoglobin reached 30 percent, within 5 and 4 hours, respectively. At the higher concentration, more than 90 percent of subjects suffered frontal headache within 4 hours and a few complained of occipital headache. No other adverse effects upon health or well-being were detected, and psychologic examination revealed only a slight tendency to poorer performance in the prolonged steadiness test. A definite increase in hemoglobin and red blood cell count was noted.

More recently, Nichols and Kinsey exposed volunteers during prolonged submarine submergence to from 25 to 100 ppm of carbon monoxide for 22 days. The number of headaches occurring during 6 days at 100 ppm was significantly

greater than the number occurring during 6 days immediately following return to outboard ventilation; but the level of carboxyhemoglobin was in the range of subjective complaints in only two subjects.

Exposure to even small amounts of carbon monoxide may impair visual discrimination. In experiments on human subjects, Halperin and co-workers showed that visual sensitivity to differences in light intensity may suffer reversible impairment even at carboxyhemoglobin levels as low as 3 percent and that the visual effect depends not only on the absolute blood carboxyhemoglobin level but also on the length of time this substance is present in the blood. Furthermore, about one-third of the carbon monoxide administered over an hour's time appears to diffuse into the tissues and is tightly bound there, so that after carbon monoxide is eliminated from the blood, visual impairment may persist for varying periods of time, depending both on the concentration of carbon monoxide in the blood and the duration of its presence there. It has also been shown that carbon monoxide exposure may affect the auditory and nervous systems.

#### *Carbon monoxide in cars*

Recent research has focused attention on the extent to which carbon monoxide in the passenger compartment of motor vehicles in traffic or parked alongside heavily travelled streets may reach concentrations in excess of those in the ambient air. Because of the possible adverse effects on motorists' ability to respond to complex driving situations, this aspect of the carbon monoxide problem is being given increasing attention by the Division of Air Pollution.

Concentrations of carbon monoxide inside automobiles travelling on or parked along routes of high traffic density during rush-hour periods have been measured in the six cities where the Public Health Service conducts air sampling in its Continuous Air Monitoring Program. The concentrations measured represent exposures experienced by commuters, bus drivers, taxicab drivers, policemen, and others travelling on busy routes.

The 30-minute integrated samples collected in this preliminary investigation showed that carbon monoxide concentrations inside motor vehicles in traffic were generally considerably higher than levels recorded simultaneously at Continuous Air Monitoring Program sites. In heavy traffic concentrations inside vehicles were 1.3 to 6.8 times the simultaneous ambient air values. In all likelihood, in-car concentrations were even higher at times; peak values could not be determined from the 30-minute integrated samples.

In each of the six cities, carbon monoxide concentrations exceeded 30 ppm in at least 10 percent of the integrated samples. The averages of all samples collected in each city ranged from 21 to 39 ppm. The range of individual samples was 7 to 77 ppm.

In 1956, the Fuel Research Station in England reported the occurrence of elevated levels of carbon monoxide. In the January 1956 smog episode, carbon monoxide concentrations in the ambient air reached 50 ppm in London and 80 ppm in Salford. Inside automobiles, concentrations were undoubtedly considerably higher. For comparison, the average carbon monoxide level in London during 1955 was 15 ppm.

Concentrations higher than 100 ppm occasionally occur in garages, tunnels, behind automobiles, or in the open atmosphere. For example, maximum concentrations of more than 100 ppm were found during several months of observation in Detroit in 1960. Recent measurements in London suggest that such levels may not be simply sporadic; in Oxford Circus, there were frequent periods of more than 100 ppm.

It is quite possible, then, that the levels of carbon monoxide that are reached in the streets both in vehicles and close to highways are frequently high enough to affect some especially susceptible persons, such as those already suffering from a disease associated with a decrease of oxygen-carrying capacity of the blood (e.g., anemia), or those suffering from cardio-respiratory disease. The extra burden that is placed on the body by the reduction of the oxygen-carrying capacity of the blood induced by carbon monoxide may cause injury to vital organs. People already burdened by the presence in their blood of unusual amounts of carbon monoxide because of tobacco smoking or occupational exposure, may also be adversely affected by the extra amount of carbon monoxide they inhale from contaminated air.

#### *Chronic exposure*

Another important aspect of the carbon monoxide problem relates to the occurrence of injury to persons exposed to low levels of the gas over long periods of

time. Some researchers believe that even small amounts of this gas are likely to produce some detectable response.

In many foreign countries, chronic carbon monoxide poisoning has been an accepted clinical entity for some years. It was described in Finland in drivers of motor cars operated by charcoal gas; in Yugoslavia; in Scandinavian countries; and in Canada. In Japan, workers occupationally exposed to carbon monoxide fumes exhibited optic neuritis, hearing impairment, and vestibular disturbance conceivably attributable to the exposure. In Russia, Skvortsova surveyed schoolgirls who had lived from one year to their entire lifespan within a mile or so of steel furnaces, where atmospheric carbon monoxide levels reached concentrations of 106 ppm. Findings included elevated red blood cell counts (with low-normal hemoglobin) in 28 to 46 percent of subjects and a corresponding incidence of headache, fatigability, and poor appetite, all of which were attributed to chronic carbon monoxide exposure.

In 1961, Lindgren reported on a study in which he had examined workers occupationally exposed to carbon monoxide. These workers suffered from an excessive frequency of headache, interpreted by the investigator as a sign of repeated slight acute poisoning, but no other clinical manifestation considered typical of chronic carbon monoxide poisoning was found any more frequently in the exposed than in a control group.

Investigations reported by Von Post-Lingen in 1964 and carried out between 1955 and 1958 at the National Institute of Public Health in Stockholm revealed different results than did Lindgren's study. Observations were made of the reactions of healthy persons to carbon monoxide concentrations which do not generally cause subjective disturbances. The results of these experiments showed that: (1) Daily inhalation of carbon monoxide for four weeks, producing carboxyhemoglobin of 10-11 percent, gave rise to a cumulative effect which was manifest as latent impairment of the ability to distinguish between light flashes in rapid succession; (2) Daily inhalation of carbon monoxide producing 6-7 percent or 10-11 percent carboxyhemoglobin caused increase of sensitivity. In some sensitivity subsided during the following months and disappeared after a year.

#### *Current laboratory studies*

An ongoing study by the Division of Air Pollution is providing data that underline the possible hazards of high levels of carbon monoxide in cars and along busy streets. In one phase of the study, rats were exposed to carbon monoxide in concentrations of 30 to 50 parts per million for periods ranging from 15 minutes to two hours. A noise or an odor was used to simulate an environmental stimulus. The animals' brain impulse patterns were recorded and analyzed electronically.

Rats exposed to carbon monoxide showed an abnormal pattern of brain impulses. The abnormality seemed to correspond to reduced alertness and attentiveness, as indicated by the animals' response to noise and odors. Exposed animals were not as prone to investigate the stimulus as were normal animals not exposed to the carbon monoxide.

The findings suggest that exposure of the rats to carbon monoxide interfered with their ability to get along in their environment. Though the carbon monoxide did not seem to impede the animals' ability to receive stimuli or act on them, it may have reduced their ability to integrate such stimuli and thus lay the groundwork for making an appropriate response.

The significance of these findings in terms of human behavior is still uncertain, but the implication is that carbon monoxide in relatively low concentrations may keep man from dealing properly with a complex situation, such as driving in traffic. The effect may be similar to that of alcohol or fatigue; indeed, the effect of carbon monoxide may be doubly dangerous when a driver is tired, has had an alcoholic beverage, or is under treatment with certain drugs, such as tranquilizers.

A preliminary investigation conducted in the summer of 1965 in six major cities indicated that carbon monoxide levels inside cars in heavy traffic are often in the range in which rats' brain impulses are impaired. In the six cities—Cincinnati, St. Louis, Philadelphia, Denver, Chicago, and Washington, D.C.—in-car carbon monoxide concentrations were substantially higher than ambient air levels at the same time. The measurements were made on express-type highways and in downtown streets, mainly during morning and evening rush-hour traffic. Thirty-minute air samples were collected in plastic bags and then analyzed; air was taken through open car windows.

The investigation is being continued on a somewhat more sophisticated scale. A mobile sampling unit has been equipped to measure both carbon monoxide and hydrocarbons on a continuous basis and record the results automatically. The samples are representative of air that enters a car through open windows and air-intake ducts for heating systems.

The mobile unit has made measurements in Cincinnati, Louisville, Atlanta, Baltimore, and New York City. Also scheduled are Chicago and Detroit. Additional cities will be scheduled later. The results thus far are similar to those of the preliminary investigation. This study is being conducted by the Division of Air Pollution of the Public Health Service.

#### Selected References

1. Sayers, R. B., Yant, W. P., Levy, E., and Fulton, W. B.: Effect of Repeated Daily Exposure of Several Hours to Small Amounts of Automobile Exhaust Gas. U.S. Public Health Bulletin No. 186, Washington, D.C., 1929.
2. Halperin, M. H., McFarland, R. A., Niven, J. I., and Roughton, F. J. W.: *J. Physiol.* 146: 583-593, 1959.
3. Grut, A.: Chronic Carbon Monoxide Poisoning. Ejnar Munksgaard, Copenhagen, 1949.
4. Lindgren, S. A.: *Acta med. scandinav.* 167 (suppl. 356): 1-135, 1961.
5. Nichols, G., Jr., and Kinsey, J. L.: Carbon Monoxide as a Habitability Factor in Prolonged Submarine Submergence. U.S. Naval Medical Laboratory, Report No. 223, New London, Conn., 1953.
6. Grudzinska, B.: Electroencephalographic patterns in cases of chronic exposure to carbon monoxide in air. *Folia Medica Cracoviensia* 3: 493-515, 1963.
7. U.S. Department of Health, Education, and Welfare, Public Health Service, Division of Air Pollution, Motor Vehicles, Air Pollution, and Health—A Report of the Surgeon General to the U.S. Congress in Compliance with Public Law 86-493, The Schenck Act (Government Printing Office, Washington, D.C., 1962).
8. Xintaras, C.: Application of the evoked response technique in air pollution toxicology. *Toxicology and Applied Pharmacology* 8: 77-87, 1966.
9. Mouren, H.: The various aspects of pollution by the exhaust gases of motors of internal combustion. *Rev. Pathol. Gen. Physiol. Clin. (Paris)* 61-915-931, 1961.
10. Chovin, P.: Studies of Atmospheric Pollution in the Department of the Seine, in 1963. Municipal Laboratory Police Headquarters, Paris, France, 1964.
11. Von Post-Lingen, M. L.: The significance of exposure to small concentrations of carbon monoxide. Results of an experimental study on healthy persons. *Proc. Royal Soc. Med.* 57 (Part II): 1021-1029, 1964.
12. Brice, Robert M. and Roesler, Joseph F.: The Exposure to Carbon Monoxide of Occupants of Vehicles Moving in Heavy Traffic. Presented at the Annual Meeting of the Air Pollution Control Association, San Francisco, California, 1966.

#### PARTICULATES

Particles of solid—and occasionally liquid—matter in the air constitute a relatively small but important portion of polluted community air in most cities and towns in the United States. These so-called particulates may be either so large that they rapidly settle to the ground or they may remain suspended in the air until they are removed by such natural phenomena as rain—or until they are inhaled by people. Particulates may be quite complex in their chemical composition. The organic materials found in airborne particles may contain aliphatic and aromatic hydrocarbons, acids, bases, phenols, and other compounds. Airborne particles may also contain any of a wide range of metallic elements; those most commonly found are silicon, calcium, aluminum, iron, magnesium, lead, copper, zinc, sodium, and manganese. Sources of particulates include such activities as fuel combustion, various manufacturing and processing operations—including production of steel, cement, and petroleum products, and open burning and incineration of refuse.

#### Effects of particulates

Particulate air pollution is widely regarded as objectionable because it is often esthetically bothersome, it interferes with visibility, and it is associated with

soiling and corrosion of metals, fabrics, and other materials. Its adverse effects on health are far more subtle but are nonetheless significant. In general, concern about the health effects of particulates is related to (1) the ability of the human respiratory system to remove such particulates from inhaled air and retain them in the lung; (2) the presence in such particulates of some mineral substances having toxic or other physiologic effects; (3) the presence in such particulates of polycyclic hydrocarbons having demonstrated carcinogenic (cancer-producing) properties; (4) the demonstrated ability of some fine particles to enhance the harmful physiologic activity of irritant gases when both are simultaneously present in inhaled air; (5) the ability of some mineral particulates to increase the rate at which sulfur dioxide in the atmosphere is converted by oxidation to the far more physiologically active sulfur trioxide.

The size of airborne particles has an important bearing on whether and to what extent they will reach the lungs. Most coarse material—particles about five microns or more in diameter—lodges in the nasal passages. Smaller particles are more likely to penetrate into the lungs; the rate of penetration increases with decreasing particle size. Particles smaller than two to three microns usually reach the deeper structures of the lungs, where there is no protective mucous blanket.

Only limited data are available on the usual size distribution of particulates in polluted urban air. One study has indicated that all but about one percent of airborne particles in city air were below 10 microns in diameter. Based on existing air pollution data, it seems reasonable to estimate that about one-half (by weight) of particulates suspended in the air are of a size that can enter the human respiratory tract. This estimate is for particulates in general. The proportion of respirable material is higher for some types of particulate matter; for example, the great majority of sulfate particles are of a size that permits entrance into the respiratory tract.

The ability of particles to accentuate the adverse physiological effects of simultaneously inhaled gas is one of the most important aspects of the health hazard of particulate air pollution. Combinations of gases and particles have been shown to cause toxicity changes in rodents, resistance to air flow in the respiratory tract, and bactericidal action.

Of particular importance is the evidence that particulates enhance the ability of sulfur oxide gases to penetrate deeply into the respiratory tract and produce serious damage. Because it is highly soluble, sulfur dioxide gas, when inhaled alone, tends to be dissolved in the moist layers of the upper respiratory tract. But polluted urban air almost always contains sulfur oxides in association with solid particles; absorbed on such particles, sulfur oxides can penetrate deeply into the respiratory tract and damage the ill protected tissues of the lungs. Even when such acidic particles are neutralized to sulfates, they remain biologically active. Studies at Harvard University have indicated that two forms of sulfurous particulates—ammonium sulfate and zinc sulfate—alone or in combination, produced increased resistance to breathing in laboratory animals. The greatest degree of increased resistance was produced by sulfate particles in the same size range found in urban air.

Studies in Great Britain have demonstrated that smoke and soot particles aggravate chronic bronchitis. Because of their high porosity, such carbon particles readily adsorb gases and vapors; moreover, the combustion processes that produce these particulates also produce the complex polycyclic hydrocarbons that have been shown to be capable of producing cancer in laboratory animals. The degree to which such materials may reach respiratory organs is indicated by a finding that benzopyrene is tightly bound to soot particles and is not removed by human serum or gastric juice.

As previously noted, airborne particulates commonly contain various metallic elements. One of the most common and potentially most harmful is lead, which reaches the air both from industrial processes and motor vehicles. Available data indicate that most of the lead particles present in polluted urban air are of a size permitting entry into the human respiratory system and retention in the lungs. A study in Los Angeles showed that, with atmospheric lead levels of about 10 micrograms per cubic meter of air 75 percent of the total particle mass consisted of particles smaller than 0.45 microns. Particles of approximately one micron or smaller will probably be retained by the lungs. A detailed discussion of the known and suspected health hazards of lead is contained in the proceedings of the December 1965 Public Health Service Symposium on Environmental Lead Contamination.

A great many other metals are also present in particle form in polluted community air. Among them are many whose toxicity is well documented, mainly as a result of occupational experience, though their potential hazards in the relatively low concentrations in which they are present in the community environment have not been adequately evaluated. One such element is beryllium, whose use as an ingredient in rocket fuels poses community exposure problems. Others which are of increasing concern are cadmium, vanadium, arsenic, nickel, manganese, and chromium.

#### Selected References

1. American Association for the Advancement of Science: Air Conservation and Public Policy; Publication No. 80 of the AAAS. Washington, D.C., 1965.
2. Motor Vehicles, Air Pollution, and Health—A Report of the Surgeon General to the U.S. Congress. U.S. Department of Health, Education, and Welfare, Public Health Service, Division of Air Pollution, Washington, D.C. 1962.
3. Katz, Morris: Some Aspects of the Physical and Chemical Nature of Air Pollution. In: Air Pollution, World Health Organization, Monograph Series No. 46, Geneva, 1961.
4. Heimann, Harry: Effects of Air Pollution on Human Health. In: Air Pollution, World Health Organization, Monograph Series No. 46, Geneva, 1961.
5. Toyama, Toshio: Air Pollution and its Health Effects in Japan. Archives of Environmental Health, Vol. 8, No. 1, Jan. 1964. pp. 153-173.
6. Gocke, T. M., and Duffy, B. J.: Epidemiology of chronic bronchitis in Jersey City. Arch. Int. Med. 110: 606 (Nov.) 1962.
7. Pemberton, J. and Goldberg, C.: Air pollution and bronchitis. Brit. Med. J. 4887: 567-573 (Sept. 4) 1964.
8. Burn, J. L., and Pemberton, J.: Air pollution, bronchitis, and lung cancer. Int. J. Air & Water Poll. 7: 5-16 (Jan.) 1963.
9. Weill, H. et al: Further observations on New Orleans asthma. Arch. Environmental Health 10: 148-151 (Feb.). 1965.
10. Amdur, M. O., "The effect of aerosols on the response to irritant gases," in Inhaled Particles and Vapours, Proceedings of an International Symposium Organized by the British Occupational Hygiene Society, C. N. Davies, Ed., pp. 281-292 (Pergamon Press, London, 1961).
11. Junge, C. E., Air Chemistry and Radioactivity (Academic Press, New York, 1963).

#### OXIDES OF NITROGEN

##### Sources and emissions

Oxides of nitrogen are one of the most important groups of atmospheric contaminants in many communities. They are produced during the high-temperature combustion of coal, oil, gas, or gasoline in power plants and internal combustion engines. The combustion fixes atmospheric nitrogen to produce the oxides. At these temperatures, nitric oxide forms first and in the atmosphere it reacts with oxygen and is converted to nitrogen dioxide. While this oxidation is very rapid at high concentrations, the rate is much slower at low concentrations. In sunlight, especially in the presence of organic material as typified by Los Angeles-type photochemical smog, the conversion of nitric oxide to nitrogen dioxide is greatly accelerated.

Nitrogen dioxide, the most toxic of the oxides of nitrogen, is an important component in the complex of chemicals producing photochemical smog. It does not occur in community air as an isolated contaminant. If its potential harmfulness is to be assessed, it is essential to understand its specific biologic effects. This review is concerned with NO<sub>x</sub> as if it were the single toxicant polluting the air breathed by a community and what standards for community air would be appropriate with this assumption and current knowledge.

This review is not concerned with nitric oxide. There have been no known demonstrable cases of human nitric oxide poisoning. Nitric oxide is one-fourth to one-fifth as toxic as nitrogen dioxide in rats (Gray et al., 1952). Rats inhaling nitric oxide for as long as nine days, at concentrations of 10 ppm, failed to exceed a detectable level of hemoglobin-nitric oxide complex (Sancier et al., 1962). The electronic spin resonance method for detecting such complexes would detect as little as one tenth percent of the complex in whole blood.

Today there is a trend toward higher combustion-chamber temperature and more efficient combustion. The higher temperature results in a further increase in the production of oxides of nitrogen, especially from automobiles.



It is estimated that 0.15 kilogram of nitrogen oxides is produced per person per day. This is a maximum figure, and it reflects a standard of material well-being directly related to the industrial development of the community, the number of automobiles used, and the population density. In less mechanized societies, the figure would be far less.

In recent years Los Angeles County recorded its first instances of nitrogen oxide concentrations that exceeded the first alert (3.00 ppm) level: 3.17 ppm on December 19, 1960 and 3.93 ppm on January 13, 1961. Because of its limited ventilation, there is reason for concern at the increase of oxides of nitrogen in areas such as Los Angeles. If no steps are taken, Los Angeles will become more crowded, the ventilation will become worse because of the greater number of buildings, and the direct adverse effect may become an important factor in community air pollution.

Nitrogen dioxide is unique among the common pollutants in that it absorbs light in the visible region of the spectrum, mostly in the blue region. It is thus a yellow-brown gas. Because it is visible, substantial concentrations reduce visibility even without the presence of aerosol particles. A concentration of 8 to 10 ppm would probably reduce visibility to about 1 mile.

#### *Effects*

The hazards associated with nitrogen oxides are (i) a direct noxious effect on the health and well-being of people and (ii) photochemical oxidation of organic material, which is an indirect effect. In the concentrations normally found in community air pollution, by far the most objectionable consequences of the oxides of nitrogen are those that arise from photochemical reactions.

Of the oxides of nitrogen, nitrogen dioxide is considerably more toxic than nitric oxide, acting as an acutely irritating substance. In equal concentrations, it is more injurious than carbon monoxide. Chronic lung disease has been produced experimentally by subjecting animals to nitrogen dioxide, and there is some evidence that exposure to the nitrogen dioxide released during the filling of silos has caused a chronic pulmonary condition. The Cleveland Clinic fire of May 1929 illustrated the insidious nature of nitrogen dioxide as a poison; a large number of people died after inhaling nitrogen dioxide produced by burning x-ray film. However, exposures of this severity are rare. Nitrogen oxides, at levels found in air pollution, are only potentially irritating and potentially related to chronic pulmonary fibrosis.

Nitrogen dioxide has received considerable attention as an air pollutant because it is a hazard in numerous industries. The threshold limit (established by the American Conference of Governmental Industrial Hygienists) for an 8-hour working day has been tentatively set at 5 ppm. However, a report that a 3- to 5-year exposure of Russian workmen to concentrations of nitrogen dioxide generally below 2.8 ppm resulted in chronic changes in the lung has contributed to the belief that 5 ppm of nitrogen dioxide may not be safe for daily exposure.

The proven effects of NO<sub>2</sub> on man and lower animals are confined almost entirely to the respiratory tract. With increasing dosage, acute effects are expressed as odor perception, nasal irritation, discomfort on breathing, acute respiratory distress, pulmonary edema, and death. Nitrogen dioxide's relatively low solubility, however, permits penetration into the lower respiratory tract. Delayed or chronic pulmonary changes may occur from high but sublethal concentrations and repeated or continuous exposures of sufficient magnitude.

#### *Effects on man*

Effects on man will be considered first. The odor of nitrogen dioxide is detectable at levels which could occur in atmospheric pollution; 1 to 3 ppm (parts per million) has been demonstrated to be the threshold for this effect. Nasal irritation and eye irritation, however, do not usually occur until levels are reached well above those expected in atmospheric pollution. In one study, even at 13 ppm, only three out of eight volunteers complained of eye irritation, although seven out of eight had nasal irritation. Concentrations which have caused death from acute pulmonary edema in man have been poorly documented, but indirect evidence indicated they were in excess of 100 ppm. The concentrations which lead to delayed effects, such as bronchiolitic fibrosa obliterans, are also far too high for relevance to standards (Lowry & Schuman, 1936). There is little in the literature which verifies pulmonary effects in man other than transient discomfort at concentrations below 50 ppm. The single report suggesting such effects (Vigdortschik et al., 1937) cites not only emphysema but multiple symptoms, signs, and hematologic and biochemical changes in workers

inhaling as little as 2.6 ppm for several years; however, the report does not contain any diagnostic criteria or data that would permit evaluation. Reports which indicate an absence of effects in individuals inhaling up to 20 ppm, or 30-35 ppm, are similarly lacking in data or assurances as to the actual concentrations of NO<sub>2</sub> encountered.

#### *Effects on animals*

It is obvious that experimental and epidemiologic data on man are extremely limited in the low concentrations likely to be found in community air. At the present time, therefore, the biological basis for estimating levels at which effects may occur for NO<sub>2</sub> must depend on animal studies. Since the irritant qualities of the gas and the locus of action are the same, cautious application of these data to man is justified despite the quantitative differences known to exist in the responses of several animal species. Concentrations of NO<sub>2</sub> over 200 ppm are fatal to most species even after single brief exposure—for example 5 to 15 minutes. Concentrations of NO<sub>2</sub> between 100 and 200 ppm, continued for 30 to 60 minutes, were also fatal to most species, as were concentrations of 50 ppm or more continued up to 8 hours. Continuous exposures of 25 ppm were fatal to rats, but intermittent exposures (6 hours/day) were not. Even concentrations below 5 ppm, if maintained continuously, have led to increased mortality in rats and mice; while intermittent exposures were not associated with deaths until concentrations reached 35 to 50 ppm. Two facts are obvious in reviewing the data on lethal effects. One is that high concentrations for short periods of time have a greater relative effect in terms of death or acute pulmonary damage than do lower concentrations over longer periods of time (Gray, 1950; Carson et al., 1962; Hine et al., 1964). The second is that intermittent exposures with intervening recovery periods are less harmful to experimental animals than continuous exposures. Of course, neither continuous nor intermittent exposures are directly comparable to the cyclic and variable exposures encountered in community air.

Summarization of the animal studies aimed at demonstrating subtle, chronic, or delayed effects resulting from continued or repeated exposures to low levels of NO<sub>2</sub> is complicated by the great variety of species, exposure patterns, and timing of observations. In general, exposures to between 10 and 20 ppm of NO<sub>2</sub> produces definite and persistent pathologic changes in the lungs. Between 5 and 10 ppm, results are equivocal, with animals continuously exposed sometimes exhibiting changes in bronchial epithelium; but intermittent exposures yielded negative findings. Balchum et al. have shown that exposure of guinea pigs to as little as 5 ppm produces minor pulmonary changes and the development of circulating substances capable of agglutinating normal lung proteins.

Minor changes in the bronchial epithelium have also been described by Freeman and Haydon in rats exposed continuously to 4 ppm for 20 weeks. Although Mitina described distinct pathological changes in rabbits exposed to 2.8 ppm and 1.4 ppm intermittently for 15 to 17 weeks, other competent workers have not reported such changes in animals exposed to similar and higher concentrations. A toxic potential is confirmed by the demonstration by Buell (1965) on the ability of NO<sub>2</sub> to denature what was believed to be collagen and elastin in rabbit exposures in vivo, the increase in oxygen consumption of spleen and liver homogenates reported by Buckley and Balchum (1965), and the work of Pace showing effects on tissue cultures. It is impossible to translate these directly into standards at this time.

Since NO<sub>2</sub> is one of many toxicants present in community air, it is important that it remain at or below the lowest level at which one would predict a minimal effect on the health of the most susceptible individuals in the community. The most sensitive indicator so far discovered for a biologic effect of NO<sub>2</sub> is the production of increased susceptibility to infection by certain aerosolized bacteria. By this technique, Ehrlich and Purvis have demonstrated increased mortality in mice from *Klebsiella pneumoniae* (at approximately LD<sub>50</sub>) following 2 hours of exposure to 3.5 ppm NO<sub>2</sub>, and following 3 months' continuous exposure to 0.5 ppm NO<sub>2</sub>. However, this was not found for all strains of mice and hamsters. Some required over 2 hours exposure at 25 to 30 ppm of NO<sub>2</sub>. Translation of this effect to man and other infectious agents can be only speculative at this time. The experiments cited were deliberately designed to create the most sensitive possible indication. Care was taken not to introduce any direct effect of the gas upon the microorganisms which might reduce the effective dosage. Nevertheless, the work appears important in pointing toward possible interrelationships between air pollutants and altered responses to infectious disease. A changing

and poorly defined group of susceptible individuals would be present in any community, representing those with the critical point of dosage and immunity to still unspecified infectious diseases. In this group a minor alteration in local defensive mechanisms might be critical in determining the course of an infection. The presence or absence of appropriate organisms might well determine the consequences in terms of pneumonia or bronchiolitis which might follow a more severe exposure to an irritant gas such as  $\text{NO}_2$ . Thus, on the basis of this preliminary exploration and though the evidence is scanty, the exposure of large populations to continued concentrations of  $\text{NO}_2$  exceeding 0.5 ppm could not be justified; nor could intermittent exposures above 3.5 ppm.

The above evaluation is made in full cognizance of the fact that other consideration, such as plant damage, visibility, or combined effects with other air pollutants, may be more critical than the health effects of nitrogen dioxide alone.

The role of particulates which are always present in the atmosphere is worthy of special consideration. Boren has exposed mice to  $\text{NO}_2$  absorbed on carbon particles with resultant focal destructive lesions. This work, like the still unpublished work of Tyler using  $\text{NO}_2$  on carbon particulates in horses, may alter present views in regard to acceptable concentrations of pollutants when there are concurrent particulates which may concentrate chemical action in vulnerable points of the lung.

#### Selected references

1. "Air Conservation." The Report of the Air Conservation Commission of the AAAS. Publication No. 80 of the AAAS. 1965.
2. Balchum, O. J., Buckley, R. D., Sherwin, R., and Gardner, M. "Nitrogen Dioxide Inhalation and Lung Antibodies". Archives of Environmental Health, Vol. 10, pg. 274-277, February 1965.
3. Boren, Hollis G. "Carbon as a Carrier Mechanism for Irritant Gases". Archives of Environmental Health, Vol. 8, pg. 119-124, January 1964.
4. Buckley, Ramon D. and Balchum, O. J. "Acute and Chronic Exposures to Nitrogen Dioxide: Effects on Oxygen Consumption and Enzyme Activity on Guinea Pig Tissues". Archives of Environmental Health, Vol. 10, pg. 220-223, February 1965.
5. Carson, T. R., Rosenholtz, M. S., Wilinski, F. T., and Weeks, M. H. "The Responses of Animals Inhaling Nitrogen Dioxide for Single, Short-Term Exposures". American Industrial Hygiene Association Journal, Vol. 23, pg. 457-462, November-December 1962.
6. Gray, Edward LeB. "Oxides of Nitrogen: Their Occurrence, Toxicity Hazard". AMA Archives of Industrial Hygiene, Vol. 19, pg. 479-486, May 1969.
7. Kleinerman, J. And Wright, G. W. "The Reparative Capacity of Animal Lungs after Exposure to Various Single and Multiple Doses of Nitrite". American Review of Respiratory Diseases, Vol. 83, pg. 423-424, March 1961.
8. "Motor Vehicles, Air Pollution, and Health". A report of the Surgeon General to the U.S. Congress, June 1962, U.S. Department of Health, Education, and Welfare.
9. Pace, D. M. et al. "The Effects of  $\text{NO}_2$  and Salts of  $\text{NO}_2$  upon Established Cell Lines". Canadian Journal of Biochemistry and Physiology, Vol. 39, pg. 1247-1255, August 1961.
10. Public Health Service. "Motor Vehicles, Air Pollution, and Health". A report of the Surgeon General to the U.S. Congress, House Document No. 489, 87th Congress, 2nd Session, June 1962.
11. Purvis, Matthew R. and Ehrlich, Richard. "Effect of Atmospheric Pollutants on Susceptibility to Respiratory Infection". Journal of Infectious Diseases, Vol. 113, pg. 72-76, July-August 1963.

#### HYDROCARBONS

Among the substances responsible for photochemical air pollution are unsaturated hydrocarbons (faster reactors), saturated hydrocarbons (slower reactors), aromatics, and aldehydes. These are emitted during the incomplete combustion of all fuels (including rubbish and agricultural field wastes), but automobile exhaust is the major source. Hydrocarbons and other organic gases are also expelled during the production, refining, and handling of gasoline and from such manufacturing operations as industrial dryers and ovens, and furnaces used for baking paints, enamels, and printing ink.

Hydrocarbons are a group of substances most of which, normally, are toxic only at concentrations in the order of several hundred parts per million. How-

ever, a number of hydrocarbons can react photochemically at very low concentrations to produce irritation and toxic substances. Because of the large number of hydrocarbons involved, the complexity of the photochemical reactions and the reactivity of other compounds such as nitrogen dioxide and ozone, a complete assessment of the hazards posed by atmospheric pollution by hydrocarbons is not feasible at this time.

During the last 20 years a progressive increase in death rates from lung cancer not entirely attributable to improved diagnostic methods and increased lifespan has been reported in many countries. A remarkable feature in these reports is the observation that the death rate from lung cancer in urban areas is consistently higher than in rural areas, that this difference can be explained only in part by differences in smoking habits, and that benzpyrene may be the carcinogen common to both cigarette smoke and polluted air.

There is no doubt that the atmosphere of many polluted areas contains substances which are experimentally capable of producing cancer in animals. It has been stated that carcinogens may be found in any polluted atmosphere which is analyzed with sufficiently sensitive methods. What is not known is whether these substances are present in sufficient amounts to produce cancer in man through inhalation.

Lung cancer has been produced experimentally by exposing mice simultaneously to ozonized gasoline, a form of simulated smog, and to influenza virus. This work by Wisley and co-workers opens up a new approach to work both on the role of viruses and of air pollutants.

Two classes of carcinogens have been detected in polluted atmospheres: (1) The organic carcinogens, such as benzo(a)pyrene, dibenzanthracene and related compounds. (2) Potentially carcinogenic metals and metal compounds. The magnitude of pollution with benzo(a)pyrene is substantially greater in cities whose pollution sources are primarily the combustion of coal in comparison with those whose pollution is primarily from petroleum combustion.

Recent evidence suggests that benzpyrene and related aromatic hydrocarbons may not be the only carcinogens present in polluted atmospheres.

Their discovery that the concentration of 3, 4-benzpyrene and related aromatic polycyclic hydrocarbons in the atmosphere and in vehicular exhaust did not account for the yield of skin tumors in mice led Kotin and the University of Southern California team to experiment with aliphatic hydrocarbons. Samples of ozonized aliphatic hydrocarbons painted on the interscapular area of mice three times weekly induced papillomas or invasive epidermoid carcinoma after 421 days. Again, in strain A (tumor-susceptible) and in C57BL (tumor-resistant) mice exposed to an atmosphere of unburned ozonized gasoline in an inhalation chamber, in which aromatic polycyclic hydrocarbons were believed to be absent but which contained a variety of oxidants, the occurrence of pulmonary adenomas or alveologenic carcinomas (not true bronchogenic carcinomas) and the incidence of multiple tumors were significantly greater than in control mice breathing washed air.

A cooperative study was recently undertaken by the National Cancer Institute and the University of Southern California. In eight cities studied intensively during a benzpyrene survey, for which morbidity and mortality data were adequate, airborne particulate matter collected by the National Air Sampling Network was extracted to yield four organic fractions: crude benzol, aromatic hydrocarbon, aliphatic hydrocarbon, and oxygenated. Although benzpyrene was present in only the crude benzol fraction and the aromatic subfraction, every fraction proved capable of producing local skin tumors in C57BL mice after subcutaneous injection; but the fractions differed from city to city in their degree of tumor-producing ability. Attempts to relate human mortality in these cities to 3, 4-benzpyrene levels revealed no consistency in pattern from one city to another—hardly surprising, in view of the numerous other variables not accounted for, such as smoking habits, other air pollutants, and occupational exposures. Of great potential significance when levels in ambient air are considered, 12 monthly doses of benzpyrene appeared to be more effective in producing tumors than the same total amount given as a single dose; thus, chronic low-level exposure to these agents may be more injurious than brief heavy exposure. Equally significant in its application to atmospheric exposure was the longer interval that elapsed before tumors made their first appearance after a single injection of the same total amount.

Artificial exposure of laboratory animals has provided some evidence of the effects caused by some of the chemical agents present in this type of smog. The studies of the carcinogenic properties of ozonized hydrocarbons illustrate this

information. Both dermal and pulmonary cancers have been produced in mice artificially exposed to an irradiated mixture of ozone and unsaturated hydrocarbons. Skin painting with aromatic hydrocarbons produced skin tumors in both C57 black and strain-A mice. Skin painting with aliphatic hydrocarbons also produced skin tumors in C57 black mice. Of more interest and probably more significance is the finding that pulmonary tumors were produced in strain-A mice after their exposure to an atmosphere of ozonized gasoline. In these mice tumors developed in 41 percent under washed air conditions and in 80 percent in polluted air. Results on the C57 black mice under similar exposure are reported by Kotin and Falk. The control animals showed a very low percentage of lung tumors, whereas over one-third of those exposed to polluted air produced tumors. Additional biological effects on these mice will be reported in detail. At the moment it has been noted that the mice housed in a polluted atmosphere showed a consistent weight deficit in comparison with the controls.

In the animal experiments in which the various carcinogenic chemicals are used, the target tissue that responds with a malignant cancer growth may be in the respiratory tract or it may be at another site. In connection with the fact that respiratory tract cancer has been experimentally produced by these materials, and the strong current belief that these materials are discharged into the air in larger amounts in recent years as a result of urbanization and industrialization, it is noteworthy that recent epidemiological reports have shown that human lung cancer frequency has been steadily increasing over many areas of the world, especially in urbanized industrialized communities. The possible causal relationship of tobacco smoking to this increase is receiving world-wide attention, as the voluminous literature on the subject attests. The subject of tobacco smoking and its manifold possible health effects, although involving a problem of "personal" air pollution, falls outside the province of our immediate consideration, except in so far as the smoke produced adds to the pollution of the air breathed by bystanders. Of some importance in connection with tobacco smoking is a recent report suggesting that if cigarette smoking does, in fact, contribute to the increased frequency of human lung cancer, it cannot account for all of that increase; urban air pollution, it is argued, also contributes to the frequency of the disease. Thus it would appear that in human cancer, as in other disease, we often deal with conditions that have multiple causation, such as multiplicity being operative both when the disease is considered as a mass human phenomenon and when it occurs in an individual.

The contribution that coexistent disease may play in the development of lung cancer is uncertain. On the one hand, particularly for still active or acute lesions, the host's immunologic defenses may be weakened; on the other, the carcinogen may be better able to make entry into scar tissue. In the case of atmospheric carcinogens, the numerous respiratory irritants that accompany them in community air may promote their biologic activity through both these mechanisms.

Animal experimental work also demonstrates the importance of such biochemical phenomena as synergism and antagonism when applied to the activity of carcinogens. Substances not in themselves carcinogenic, such as croton oil, long-chain fatty acids, higher molecular weight paraffins, various aromatic compounds and phenolic derivatives, have been found capable of promoting or reinforcing the action of carcinogens and are classified as cocarcinogens.

The incidence of spontaneous and induced pulmonary tumors in mice is to an unknown degree a factor of their genetic strain, rendering interpretation of results and comparisons between different sets of experiments hazardous. Further complicating extrapolation to human terms, the tumors induced in mice have been largely adenomas, occasionally adenocarcinomas, and it is not certain that these have any comparative value as far as human cancers are concerned, particularly since it is the epidermoid lung cancer that is usually indicated as bearing a relationship to exogenous influences. The few reported instances of chemically induced epidermoid cancers in mice need to be corroborated by additional experiments, and this will require time and diligence.

Putting their findings together, Falk and his associates postulate a disturbing sequence of events: ciliary activity is inhibited by atmospheric pollutants; soot particles carrying hydrocarbons are abnormally deposited and retained in the lungs, the particles are engulfed by phagocytic cells, and the intracellular proteins elute the adsorbed hydrocarbons; conceivably a high local concentration of eluted aromatic hydrocarbons results, favoring the development of lung cancer.

## Selected References

1. Bailar, J.C., III, King, H., and Mason, M.J.: *Cancer Rates and Risks*. USDHEW, PHSP 1148, U.S. Government Printing Office, Washington, D.C., 1964.
2. Kotin, P., and Falk, H.L.: Atmospheric factors in pathogenesis of lung cancer. *Adv. Cancer Res.* 7:475-514, 1963.
3. Nelson, N.: Carcinogenic implications of inhaled pollutants. *Arch. Environ. Health* 8: 100-104 (Jan.) 1964.
4. Shimkin, M.B.: *Science and Cancer*, PHS Pub. No. 1162, USDHEW, National Cancer Institute, 1964.
5. Dean, G.: Lung cancer in Australia. *Med. J. Australia.* 49 1003-1006 (June 30) 1962.
6. Kotin, P., and Falk, H.L.: Air pollution and lung cancer. In: *Proceedings, National Conference on Air Pollution*, USDHEW, PHS Pub. No. 1022, U.S. Government Printing Office, Washington, D.C., 1963.
7. Kotin, P., and Falk, H.L.: II. The experimental induction of pulmonary tumors in strain-A mice after their exposure to an atmosphere of ozonized gasoline. *Cancer* 9:910-917 (Sept.-Oct.) 1956.
8. Saffotti, U. et al.: Experimental studies of the conditions of exposure to carcinogens for lung cancer induction. *J. APCA* 15:23-25 (Jan.) 1965.
9. Kotin, P.: Air pollution with cancerogenic substances. *Acta Union Internationale Contre le Cancer* 19:3-4, 460-471, 1963.
10. *Motor Vehicles, Air Pollution and Health*. A report from the Surgeon General to the U.S. Congress. Department of Health, Education, and Welfare. June, 1962.
11. Stern, A.C., ed.: *Air Pollution*, Vol. I, Chapter 9. Academic Press, 1962.

Mr. ROGERS of Florida. Do you feel we are doing enough in providing help for the manpower that will be needed in this area?

Mr. MACKENZIE. We are giving emphasis to this element of our program, Mr. Rogers. In the past several years, we have increased our budget proposals for training of personnel by about threefold and we are doing this in several ways. We are making training grants to a number of universities for training of technical people in this field.

We are supporting fellows in graduate training at other schools and we are conducting short courses within our own laboratory at Cincinnati and from there elsewhere in the field.

Mr. ROGERS of Florida. I visited Cincinnati and was very impressed with what you are doing. As I understand you are sending out teams to areas rather than bringing people to Cincinnati which I would think could be more economical and perhaps reach a wider number of people.

Mr. MACKENZIE. Yes.

Mr. ROGERS of Florida. I wanted to ask one more question, Mr. Chairman. As you know, our committee is not inclined to go along with open-ended authorizations. I would think we would want some substantiation of the figures that the Senate has put in their bill, \$46 million, \$60 million, \$80 million, as to how these funds would be used, where they would be planned for and if you could submit that for the record, I think this could be helpful.

Mr. MACKENZIE. Yes, sir.

(The information requested follows:)

**BACKGROUND MATERIAL RELATING TO PROPOSED ANNUAL APPROPRIATION LIMITATIONS FOR FISCAL YEARS 1967, 1968, AND 1969, AS CONTAINED IN S. 3112, AND AIR POLLUTION PROGRAM PROJECTIONS THROUGH PERIOD AUTHORIZED BY H.R. 13199, 1968-72**

The Division of Air Pollution of the Public Health Service, Department of Health, Education, and Welfare, in connection with its responsibilities under the Clean Air Act, and in conformance with Executive Branch requirements, prepares long-range plans, generally for five years ahead, on the basis of its best professional judgments as to what is required to fulfill legal requirements in a manner which will most effectively deal with the air pollution problem.

Accordingly, the table below indicates estimates of the cost of the Federal air pollution program for the years 1967-72. These estimates are professional judgment estimates and do not constitute official estimates for future years approved by the Executive Branch. In addition, there follows an explanation of the more significant goals which the program is attempting to achieve and the major program activities proposed to meet these goals.

**AIR POLLUTION PROGRAM, FISCAL YEARS 1967-72**

**Grants**

(a) *Research*.—Current experience indicates a continuation of and increase in the wide and active interest by universities in air pollution research. The current and projected existence of backlogs of approved but unfunded grant applications has been used as an experience factor in projecting activity levels through 1972. This program will constitute an important resource to carry out much of the research specifically earmarked for attention in the Clean Air Act.

(b) *Fellowships*.—This program is one phase toward meeting a resource goal of 4,000 additional trained personnel to curtail the current shortage of trained personnel nationally and to meet the increasing demands of expanding State and local control programs.

(c) *Training*.—Increased emphasis in the university grant program will be placed on curricula to develop trained manpower for expanding State and local regulatory control programs. This activity, as in the case of Fellowships, is aimed at assisting in the development of a university-based training structure which will be instrumental in developing the additional trained manpower needed.

(d) *Control programs*.—The goal is an expansion of State and local air pollution regulatory efforts to about 50 percent of the necessary level of activity by 1970 with 100 percent attainable by about 1975. While broadened financial assistance authority, in the form of maintenance or support grants for on-going programs, will be required to meet this goal, good progress has already been made to date through the award of stimulatory control program grants and this progress is expected to continue. It is hoped that the available funds will permit funding of all approved projects. Regional control organizations will be given increased emphasis for assistance.

(e) *Survey and demonstration*.—These grants are directed toward the dual purpose of: a) permitting a State or locality to assess its problem prior to embarking on a specific control program, or assisting in the design of a control program; and b) demonstrating, in a practical field application, new techniques for control of air pollution. Emphasis is currently being given to the survey grant as a preliminary to regulatory control activity, in line with current build-up of programs. In subsequent years, as initial surveys have been completed, the emphasis will shift to demonstration of control techniques which will be of broad significance nationally.

**Direct operations**

(1) *Research*.—Major emphasis will be in three areas. First, by 1970 it is planned that there will be developed air quality criteria for all major pollutants known to be harmful to man, plants, and materials. This activity will encompass a review and evaluation of all available data and will include clinical, laboratory, and epidemiological research aimed at developing the data necessary for the air quality criteria. This schedule for criteria is geared to the build-up of State and local regulatory programs, which will be the prime users of the criteria.

The second area of research emphasis is with respect to air pollution caused by automotive vehicle emissions. As a result of authority under the Clean Air Act Amendments, it is estimated that by 1970 hydrocarbon and carbon monoxide emissions from about 25 percent of all motor vehicles will meet Federal standards. The FY 1968 research program will be aimed at improvement in techniques, technical developments to permit extension of controls to include oxides of nitrogen, not now controlled, and further efforts to stimulate the development of fundamentally improved means of vehicle propulsion, from the pollution point of view.

The third area of research emphasis is in the control of oxides of sulfur. Toward the end of meeting our goal of having economically feasible means for control of oxides of sulfur emissions by 1970, work will be undertaken to test promising control techniques on a pilot scale, including construction costs, as part of a research contract, cooperatively with TVA, of pilot-scale control apparatus.

These latter areas of research have been specifically singled out for increased emphasis under the 1965 Amendments to the Act.

(2) *Training.*—The direct, short-term technical training offered at the Sanitary Engineering Center, Cincinnati, Ohio, is a necessary and valuable complement to the full-time graduate level training which is principally the type of training funded under the Training Grants and Fellowships activities. This activity is presently under severe pressure to meet demands for intensive training of State and local personnel, as part of the expanding regulatory effort nationally. To maximize the training effort, increased emphasis will be placed on field courses, and on training aids which have a "multiplier effect," such as films and programmed instruction.

Curriculum emphasis will be increasingly on those aspects of air pollution most critically needed by personnel engaged in public regulatory control programs.

(3) *Technical services.*—The basic goal of this activity is to provide adequate technical consultation and related supporting services to State and local control agencies. A major expansion, related to the build-up of State and local regulatory control programs, is contemplated. A major objective is the development of industrial guides to good practice, for all the significant industrial processes in the country. This will be of value to industry, but especially as control guides to State and local agencies. The Air Pollution Technical Information Center will be operational by 1968 and will be a national source of technical information.

(4) *Enforcement and regulations.*—With respect to the Federal automotive regulatory control programs, a 25 percent reduction in pollutant emissions is planned for 1975, with a 40 percent reduction by 1985. These are difficult goals in the face of a rising automobile population, but they are goals which may be considered as "buying time" to permit development and production of "pollution-free" automobiles. Under the provisions of the Act, the automotive manufacturers will request Federal certification for nearly all models, which will mean a substantial amount of direct Federal testing of vehicles in a Federal laboratory. Such a facility is currently planned and being negotiated for. With the model year 1968 automobiles to be the first ones to be Federally regulated, operations will commence in 1967. 1968 will be the first full year of testing under this program.

With respect to Federal abatement authority, apart from motor vehicles, special emphasis will be given to abatement activity in interstate areas of pollution at the initiative of the Secretary. Over 100 areas have been identified as potential problems areas subject to Federal action under the abatement provisions of the Act. By 1968 the level of enforcement activity will be stepped up to at least double that anticipated for 1967. 1967 will be the first full year in which the international and preventive abatement authorities of the Amendments will be implemented. In 1968, there will be expanded activity, under the preventive abatement authority, with primary emphasis on the prevention of potential pollution from electric power generating plants. The projected build-up of power generating plants, with their high pollution potential, will be a major target for application of the new preventive abatement feature.

This activity also includes the program of prevention and abatement of pollution from Federal facilities. By 1970, a significantly substantial reduction in such pollution is anticipated. In 1968 major activity will be on implementing recently issued Executive Order designed to prevent pollution in new Federal construction, and to abate existing pollution.



(5) *Intelligence and surveillance.*—This activity, as a direct Federal operation, is a continuing activity designed to provide basic data on pollution trends and to permit detection of emerging problems. The National Air Sampling Network and the Continuing Air Monitoring Program are the key ingredients of this system at present. By 1972, the intelligence and surveillance program will be increasingly characterized as an input receiving and coordinating mechanism for many State and local monitoring systems which will be funded from air pollution control program grants-in-aid.

(6) *Review and approval of grants.*—This activity is concerned primarily with the legal, administrative, and technical requirements associated with the review, approval, and monitoring of the research grants, the training grants, the fellowships, the control program grants, and the survey and demonstration grant programs. The review and approval program through 1972 is geared to the anticipated levels of the related grant programs through that period.

*Air pollution estimates, 1967-72*

[In thousands of dollars]

	1967 Presi- dent's budget	Proposed 1967 addi- tional <sup>1</sup> 1967,	1968 esti- mate <sup>2</sup>	1969 esti- mate <sup>2</sup>	1970 esti- mate <sup>2</sup>	1971 esti- mate <sup>2</sup>	1972 esti- mate <sup>2</sup>
<b>Activities:</b>							
<b>Grants:</b>							
Research.....	6,958	-----	9,000	10,000	12,000	14,000	16,000
Fellowships.....	468	-----	1,000	1,000	1,000	1,000	1,000
Training.....	2,000	-----	3,000	3,000	3,000	3,000	3,000
Control programs.....	7,000	7,000	21,000	25,000	28,000	31,000	31,000
Survey and demon- stration.....	2,000	-----	3,000	3,000	3,000	3,000	3,000
<b>Total, grants.....</b>	<b>18,426</b>	<b>7,000</b>	<b>37,000</b>	<b>42,000</b>	<b>47,000</b>	<b>52,000</b>	<b>54,000</b>
<b>Direct operations:</b>							
Research.....	11,320	1,850	18,300	20,000	23,000	24,200	25,000
Abatement activities.....	1,652	750	4,682	5,700	6,400	6,900	7,400
Motor vehicle pollution control.....	845	400	1,445	1,670	1,900	2,100	2,300
Technical services.....	2,639	-----	5,208	6,900	7,400	7,900	8,400
Training.....	865	-----	1,600	1,800	2,100	2,400	2,600
<b>Total, direct opera-       tions.....</b>	<b>17,151</b>	<b>3,000</b>	<b>31,185</b>	<b>36,070</b>	<b>40,800</b>	<b>43,500</b>	<b>45,700</b>
<b>Grand total.....</b>	<b>35,577</b>	<b>10,000</b>	<b>68,185</b>	<b>78,070</b>	<b>87,800</b>	<b>95,500</b>	<b>99,700</b>

<sup>1</sup> Estimated on the basis of enactment of S. 3112, to include funds for maintenance grants and for required enforcement activities which cannot be funded under existing statutory limitations for 1967.

<sup>2</sup> Professional judgment estimates, not having official executive branch approval.

Mr. ROGERS of Florida. I am glad to see some emphasis being placed now by the Department and we are going to look to you for increased leadership in the whole area. I think people are very conscious now of the need for pollution control and certainly, I would hope we would have an effort to get greater cooperation from the industry, from the automobile industry, for instance, and with other industry which is contributing to the pollution problem.

Mr. MACKENZIE. May I say that we have had complete and excellent cooperation from the automobile industry in implementing the regulations under title II of the Act.

Mr. ROGERS of Florida. That has been my impression and I think it is commendable.

Mr. MACKENZIE. I appreciate personally, Mr. Rogers, the interest of this committee and hope that this will continue.

Mr. ROGERS of Florida. It will.

Mr. NELSEN. Will the gentleman yield?

Mr. ROGERS of Florida. I yield.

**Mr. NELSEN.** In listening to the discussion relative to electric engines, being a little bit of a mechanic myself, I know that there are certainly some limitations on an electric automobile because of fuel supply but certainly, we would like to see the Department exciting the automobile industry into action and I think for us to assume that the experimental process would be developed by your Department would be perhaps a fond wish but I think the stimulation would come from there. In the areas of air pollution and other areas, there is where the real effort I think must be and then the stimulation of the automobile industry. I think great advances have been made in the construction of automobiles and even in the crankcase ventilation that now goes through the carburetors again.

We see many old automobiles on the street that are emitting a blue smoke behind. This is something that is a wornout engine of course. I must want to make the point. I think the point is well taken but the great emphasis must be in the automobile industry because they have the facilities of research.

The stimulation must come from your Department and from the Congress.

**Mr. ROGERS** of Florida. I might say too, that although I agree, a great deal has been done so much more can be done. You get behind one of these buses, even new ones, and I don't think much has been done there. I would hope that you would give a great deal of attention to that as well. It is my understanding that there have been batteries now invented which have long, long life so that it is not a question of a battery running out any more.

I think the possibility of an electric motor might have great promise. So I would hope that this would be encouraged.

**Dr. PRINDLE.** I think Mr. Nelsen has made the very good point and I think the committee has made the very good point that obviously this is a Federal-industrial relationship that has to be developed and obviously, this is one that does take time and effort on both our sides.

I think we can develop this. I might mention that one of the techniques that we used to try to accomplish the stimulation and cooperation are in the national conferences. We will be holding another one this year in December which we hope will involve all the segments of the public and the industry and attempt to bring out these questions and these problems so that we can bring them into discussion and effect this approach.

**Mr. NELSEN.** I noted that in your testimony you did refer to the diesel engine. I quite agree. It is very uncomfortable.

**Mr. JARMAN.** We have had the first bell for a quorum but let me ask one question. Dr. Prindle, in your statement, you made reference to the Federal Government having initiated several interstate abatement actions. What type? What examples?

**Dr. PRINDLE.** These are under the terms of course of the act. Mr. MacKenzie has the details of these.

**Mr. MACKENZIE.** The abatement actions to which reference is made, Mr. Chairman, are those which are concerned with interstate pollution, pollution which arises in one State and adversely affects health or welfare of people in another.

Nine such actions have been initiated under the terms of the Clean Air Act since the authority was first enacted. Three of these were at the requests of Governors of the States involved and the other six were

initiated by the Secretary of our Department. I will be glad to put into the record a listing of these if you would like to have them.

(The information requested follows:)

*Abatement Actions Initiated Under the Clean Air Act (as of September 29, 1966)*

<i>Area</i>	<i>Initiated by—</i>
1. Shelbyville, Del., Bishop, Md.-----	Governor.
2. Shoreham, Vt., Ticonderoga, N.Y.-----	Do.
3. New York-New Jersey metropolitan area-----	Do.
4. Steubenville, Ohio, Weirton and Wheeling, W. Va--	Secretary, HEW.
5. Clarkston, Wash., Lewiston, Idaho-----	Do.
6. Parkersburg, W. Va., Marietta, Ohio-----	Do.
7. Kansas City, Mo., Kans.-----	Do.
8. Ironton, Ohio, Huntington, W. Va., Ashland, Ky.--	Do.
9. District of Columbia, Virginia, Maryland met-	
ropolitan area-----	Do.

Mr. ROGERS of Florida. Is it not true that the Secretary can call the conference and make some suggestion and then if they are not carried out, can call on injunction procedures?

Mr. MACKENZIE. It is a fairly involved procedure.

Mr. ROGERS of Florida. But anyhow, we have enforcement here. As I recall it was put in the act.

Mr. MACKENZIE. It has to go through essentially three steps, conference, public hearing, and eventually court action if necessary.

Mr. JARMAN. Thank you very much, gentlemen, for an able presentation.

At this time, without objection, I wish to insert in the record a letter from the Department of Health, Education, and Welfare to Mr. Staggers, chairman of the full committee, outlining programs underway and in prospect for reducing sulfur oxide emissions from combustion sources.

(The letter referred to follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
Washington, D.C., July 27, 1966.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your letter of June 10, 1966, requesting that you be advised as to the steps this Department has taken to implement Sections 103(a)(4) and 103(a)(5)(B) of the Clean Air Act, our plans in this area, and other pertinent information.

Our response, "Programs Under Way and in Prospect for Reducing Sulfur Oxide Emissions from Combustion Sources," is included herewith as Attachment A.

We trust that this information will assist your Committee in carrying out its responsibility in this area, which, as you note, is of such vital concern to the Nation.

Sincerely yours,

WILBUR J. COHEN,  
Under Secretary.

ATTACHMENT A

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE PROGRAMS UNDERWAY AND  
IN PROSPECT FOR REDUCING SULFUR OXIDE EMISSIONS FROM COMBUSTION  
SOURCES

A. INTRODUCTION

The problem of sulfur oxide emissions from the combustion of fossil fuels is one of growing international significance, with which more and more industrial nations are demonstrating serious concern. This problem, with its serious implications for human health, is today a matter of common knowledge. The

Department of Health, Education, and Welfare is taking the lead in research and development designed to reduce these emissions. Although, within the United States, some research is being supported by the fuel, chemical, and utility industries, and the Office of Coal Research of the Department of the Interior, the major effort is being provided by our Department through the Public Health Service's Division of Air Pollution. This involves in-house research, non-Federal and interdepartmental contracts (notably with Interior's Bureau of Mines), and grant programs.

The Department of Health, Education, and Welfare is keenly aware of the broad economic implications of this public health problem and is putting top emphasis on the search for low-cost techniques for dealing with it. The Department's research efforts to control sulfur dioxide emissions are primarily devoted to carrying out two directives from Congress: Removal of Sulfur from Flue Gas, 103(a)(5)(B) in the Clean Air Act, and Removal of Sulfur from Fuels, 103(a)(4) of that Act. These authorities were first specifically reflected in the FY 1965 program, and the additional directives in the 1965 Amendments were programmed for the ensuing Fiscal Year, 1967. Progress in these two areas is covered below in sections B and C respectively. However, our total program is not limited to these areas; other facets of the problem which are being actively explored by the Department are reported in brief in section D, Other Efforts to Attack the Sulfur Problem. Tentative Cost Estimates are discussed in section E.

#### B. REMOVAL OF SULFUR FROM FLUE GAS

Section 103(a)(5)(B) of the Clean Air Act is directed toward the development of improved low-cost techniques designed to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels. Considerable effort has been devoted to this objective, and some progress has been made.

There is available, in the metallurgical and chemical industries, a considerable technology for the removal of relatively high concentrations of sulfur oxides from flue gases. The application of this technology to the relatively low concentrations found in powerplant flue gases has not proved feasible—hence the present worldwide search for applicable processes.

The pioneer full-scale installations of plants for this purpose were in England, where Thames River water was used to wash the sulfur oxides from flue gas. Based upon this and other experience with wet processes, the British now recommend against flue gas washing, with the result that most of the processes now under investigation around the world are dry, or, if wet, involve reversible chemical reactions and do not leave a sulfurous discharge to a stream.

In Germany, the emphasis is on a process that uses activated carbon to absorb the sulfur oxides from the flue gas. In Japan, one process under development first catalytically converts sulfur dioxide to sulfuric acid and then to ammonium sulfate; another process chemically reacts the sulfur oxides into a regenerable manganese sulfate. In Czechoslovakia, an ammoniacal washing process, which yields ammonium sulfate as the end product, is under consideration. In all these countries, as well as in the United States, there is interest in processes that blow alkaline materials into the furnace, because, of all current processes, this is the one most applicable to existing installations.

In the United States, a number of promising processes are now in the proposal stage. There are, however, only two American processes which have reached the pilot-plant stage: the catalytic conversion of sulfur dioxide to sulfuric acid, and the reversible absorption of sulfur dioxide by alkaliized alumina. The former process has been developed by private industry, the latter by DHEW-funded research in the Department of the Interior.

The control method of injecting alkaline materials into furnaces to react with sulfur oxides to produce a solid which subsequently can be removed by electrostatic precipitation or filtration is of immediate application in existing powerplants. Consequently, under a contract with Battelle Memorial Institute, a fundamental study of sulfur fixation by lime and magnesia is under way to elucidate the thermodynamics and kinetics of the reactions involved. Past efforts to remove  $SO_2$  from combustion gases by reacting the  $SO_2$  with alkaline materials such as limestone and dolomite have been handicapped by our inability to inject

these materials into power boiler systems with assurance of good reaction efficiency.

As mentioned above, this Department has transferred funds to the Bureau of Mines of the Department of the Interior for the development of the alkalinized alumina process for scrubbing sulfur dioxide from stack gases and recovering the sulfur in elemental or acid form. Process cost estimates have been developed for the alkalinized alumina, catalytic oxidation, and activated carbon processes for removing sulfur oxides from flue gases.

In-house work has proceeded along more basic lines. Researchers have sought more reactive absorbents for scrubbing stack gases. They have initiated programs to achieve reduction in emissions of pollutants through the use of fuel additives and combustion process modifications.

Engineering evaluations of many removal processes have been made to select candidate methods for early process development and prototype demonstration.

In 1967, the operation of a larger, continuous alkalinized alumina pilot plant will provide more reliable data on the performance and life of the absorbent and will reveal the parameters affecting  $\text{SO}_2$  removal over a prolonged, continuous period. Work will begin on the preparation of absorbents which will resist attrition and lead to longer life and cheaper operation. New and more efficient methods of regenerating the absorbent will be investigated. More efficient regeneration leads to smaller equipment designs and results in lower capital plant costs.

Work related to the activated carbon process will be tailored to improve the reaction rate of the sulfur oxides with the carbon, to improve the combustion resistance of the carbon, and to develop improved nonthermal regeneration methods for "spent" carbon. Success in any of these areas will lower operating costs of the process.

In the catalytic oxidation process, the key to economic operation lies in the recovery of the acid in a concentration of commercial value and at a high enough temperature to prevent corrosion of process equipment. We will, therefore, investigate the feasibility of various high-temperature acid recovery systems and also perform related equipment-corrosion testing.

In both the United States and Japan, processes employing manganese oxide as the absorbent are being considered for removing sulfur oxides from stack gases. The difference in the processes lies in the method of regeneration of the absorbent. In the Japanese process, the absorbent is regenerated chemically to form calcium sulfate. The American process regenerates the absorbent electrolytically and yields a dilute sulfuric acid. Both of these products are of lower commercial value in this country than other possible sulfurous end products. Therefore, the economics of these processes would be improved if regeneration systems were devised to yield more desirable products at lower costs. A project for FY 1967 is designed to find such means of regeneration.

The time-temperature-rate relationship of various types of alkaline additives, and the effect of the method of their preparation on their activity, will be determined. Field trials of the most successful activated material are planned in prototype equipment.

The present needs are to move the more promising processes from the proposal to the pilot-plant stage; and to move the more promising pilot-stage processes to the demonstration-plant stage.

In addition to this Federal research on sulfur removal from flue gas, there is a substantial industrial effort which includes several of the processes noted above as being in the proposal stage and the above-noted pilot plant for catalytic conversion of sulfur dioxide to sulfuric acid. Also, the American Petroleum Institute is supporting a literature survey of flue gas desulfurization processes, and the Electrical Research Council and National Coal Association are jointly supporting work on the alkaline injection and alkalinized alumina processes previously described.

#### C. REMOVAL OF SULFUR FROM FUELS

Section 103(a) (4) of the Clean Air Act relates to the initiation and conduct of programs of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels.

Residual fuel oil and coal present the major problems in this area. The technology of the removal of sulfur from oil and gas is well known and extensively utilized in producing the almost-sulfur-free gas, gasoline, lubricating oils, and light fuel oils that constitute the bulk of the products of the oil and gas industry the world over.

Although an equivalent technology exists for desulfurizing residual fuel oil, its cost, as a percentage of the selling price of the product, has been so high as to discourage its employment. New American refineries avoid the problem by producing no residual fuel oil: they produce instead liquid and gaseous products in the almost-sulfur-free category, and a high-sulfur-content solid residue, petroleum coke. However, since this option is not attractive to refineries in countries which lack our demand for gasoline and light fuel oil, and which export high-sulfur residual fuel oil to the United States, and since older domestic refineries still produce this product, there is still need for research to develop lower-cost methods of desulfurizing heavy fuel oil.

A start has been made with respect to this problem. Under a contract, the Bechtel Corporation investigated the cost of reducing the sulfur content of certain residual fuel oils to one percent. The most important conclusion from this study was that the manufacture of low-sulfur residual fuel oil from high-sulfur crudes requires an incentive pricing of 40 to 65 cents per barrel above fuel oil produced without sulfur restriction. This cost is increased about 20 percent if applied to an existing refinery. Further alternatives in the refining operation are being explored to lower, as cheaply as possible, the sulfur content of residual oil to 0.5 percent.

The technology of the removal of sulfur from coal is not well developed. It is known that coal-washing processes which lower the ash content of coal also lower its sulfur content to the extent that sulfur is associated with relatively large pieces of ash-substance. However, the bulk of the sulfur is more intimately associated with the coal substance and is released only by grinding and extraction processes which are presently relatively expensive. Research is needed both to lower the cost of these processes and to seek new ones. For years the needs for low-sulfur-content coal have been met from naturally occurring low-sulfur-content seams. Incentives for the development of coal desulfurization processes are of recent origin, too recent for a significant research effort to have developed.

Studies of the forms and the washability of sulfur in American coal used in powerplants have been undertaken by contract. Analyses of the ability of various commercial processes used in coal preparation to remove sulfur are being examined to determine feasibility and costs of the processes for particular coals which are utilizable in powerplants. Preliminary studies of new processes have been conducted which may have potential value for use in sulfur removal from coal; these processes include air elutriation, thermomagnetic or electrostatic forces, and corona discharge.

Besides the Federal research effort in this area, there is also an industrial effort. The American Petroleum Institute is supporting a study to determine the estimated cost of desulfurizing Caribbean residual fuel oil and is assembling data on petroleum industry expenditures for fuel oil desulfurization, and the Electric Research Council and the National Coal Association are jointly sponsoring research on the removal of pyritic sulfur from coal.

#### D. OTHER EFFORTS TO ATTACK THE SULFUR PROBLEM

Basic and necessary though it is to carry out the two specific directives from Congress which are aimed at controlling emissions of sulfur compounds to the atmosphere through removal of sulfur from fuels and stack gases, these are by no means the only responsibilities of the Department of Health, Education, and Welfare in connection with sulfurous air pollutants. Other related efforts under way or planned by the Department can be catalogued in four groups: (1) determining overall research needs and priorities; (2) research on alternatives to desulfurization of fuel and flue gas; (3) necessary studies of factors other than control; and (4) supplementary programs which can aid in SO<sub>2</sub> control.

(1) *Determining Overall Research Needs and Priorities.*—This is a continuing study for which the need is obvious if we are to avoid premature and arbitrary

decisions. It involves learning about the gaps in our present knowledge and deciding how best to apply available resources to filling these gaps. A first step was a comprehensive survey of the world's literature; one result has been the publication of a 383-page bibliography of sulfur oxides and other sulfur compounds. Continuing worldwide liaison is maintained on this matter and two representatives of the Department are now in Europe studying sulfur-control methods and related current research in England and Germany. We are also cooperating with the Organization for Economic Cooperation and Development in setting up international air pollution studies. One of the studies recommended for top priority is the sulfur problem. Representatives of this Department have been involved in recent official exchange missions which, among other things, investigated these matters—a Presidential Mission to Germany and a Japanese Natural Resources Mission to the United States.

(2) *Research on Alternatives to Desulfurization of Fuel and Flue Gas.*—This Department attaches utmost importance to its research on the feasibility of means to control atmospheric levels of sulfur oxides by means other than desulfurization of fuels and flue gas. These means include: the use of taller stacks; the location of new fuel-burning sources outside of urban areas; allocating fuel among powerplants so that the better fuels are burned in the plants that are poorly sited or poorly equipped with respect to air pollution and vice versa; separating fuel into better and poorer fractions at the point of production, to permit the allocation suggested above; allocating power load among powerplants so that less load is carried by those that are poorly sited or poorly equipped with respect to air pollution, and vice versa; allocating power load among powerplants so that loading reflects the relative dispersive capacity of the atmosphere at any given time at all plants; and shifting from more to less pollution-producing fuels at individual powerplants when the dispersive capacity of the atmosphere decreases.

(3) *Necessary Studies of Factors Other Than Control.*—As an agency primarily concerned with public health and welfare, the Department must continue and expand its studies of the effects of sulfurous pollutants; and develop Federal criteria as guides to the setting of legal standards—for those and other pollutants—for emissions and for ambient air quality. Reactions which take place after sulfur compounds are emitted to the air must be studied. Surveys must be made in areas of high pollution, and continuing measurements taken throughout the country through the National Air Sampling Network and the Continuous Air Monitoring Program which are operated by the Department.

(4) *Supplementary Programs Which Can Aid in SO<sub>2</sub> Control.*—Certain basic studies are being pursued which are expected eventually to contribute to a reduction in SO<sub>2</sub> emissions. For example, a study is being conducted at Penn State University under the Department's research grant program at a cost of \$20,240 which is concerned with "Interaction of Sulfur Dioxide with Carbon Surfaces." This will help to optimize plant design for minimum operating costs under various flue gas conditions which prevail in the wide variety of existing powerplants.

A major Department program which will importantly affect the overall effort to reduce sulfurous effluents is the Control of Air Pollution From Federal Installations. On May 26 of this year, President Johnson signed Executive Order 11282, which directs the heads of all Federal agencies to lead in the administration's efforts to improve the quality of the Nation's air. In signing the order, the President stated that the most difficult problem encountered in writing the order was the lack of an economically feasible technology for controlling emissions of sulfur. This Department has supplemented the order by issuing standards which set precise limitations on emissions which will be allowed from Federal buildings and facilities. These standards implement the expressed will of Congress that the Federal Government shall be an exemplary "good neighbor" in abating community air pollution. With regard to sulfur oxides, they require that most Federal Installations burn the lowest-sulfur-content fuel that is reasonably available. Among the factors to be considered in determining "reasonable availability" are: price, reliability of supply, and the magnitude of the air pollution problem.

The Federal Government has proposed spending more than \$3 million in 1967 on research to control sulfur emissions. This includes \$1 million for designing four sulfur-removal plants, the construction of which would cost a total of \$8 million. The President has directed the Secretaries of the Interior and Health, Education, and Welfare to explore with the Bureau of the Budget the feasibility of increasing the Federal effort to find a solution to the sulfur emission problem.

#### E. TENTATIVE COST ESTIMATES

The Department's program for research and development on the control of air pollution by sulfur compounds has been and may continue to be limited by appropriation ceilings. Although the maximum appropriation authorized under the Clean Air Act has increased each year these ceilings have imposed limitations on the effort which could be expended on these as well as other areas of our total program. We have endeavored to utilize available funds most efficiently and to estimate future needs on the basis of current expectations. However, the areas of interest under consideration here are so relatively new, and are developing so rapidly, that even medium range estimates can be considered only as tentative. If maximum progress at least cost is to be achieved, it will be necessary to review at frequent intervals the authorities and resources required. For example, the above programs as currently envisaged would require approximately \$25 million.

(The following information, requested by Congressman Rogers, was subsequently supplied by Mr. Fred Rehm, deputy director, Milwaukee County Department of Air Pollution Control:)



# **AIR POLLUTION CONTROL ORDINANCE**

**Department of Air Pollution Control  
Milwaukee County**

**ADOPTED DECEMBER 20, 1961  
PUBLISHED JANUARY 4, 1962  
and  
AMENDED THROUGH JULY 21, 1964  
by the  
MILWAUKEE COUNTY BOARD OF SUPERVISORS**

## CHAPTER 89 AIR POLLUTION CONTROL

- 89.01 Creation of department of air pollution control.
- 89.02 Definitions.
- 89.03 Duties of the department of air pollution control.
- 89.04 Establishment of rules and regulations.
- 89.05 Installation permit, operating permit, and certificate of operation.
- 89.06 Sale, use, or consumption of certain fuels.
- 89.07 Fuel shortage emergency.
- 89.08 Reporting of sales and purchases.
- 89.09 Equipment.
- 89.095 Suitable process or control equipment and fuels.
- 89.10 Fees.
- 89.11 Limits of emission and standards of measurement.
- 89.12 Entrance to premises.
- 89.13 Persons liable.
- 89.14 Penalties for violations.
- 89.15 Period of grace.
- 89.16 Maintenance of records.
- 89.17 Appeals to appeal board.
- 89.18 Co-ordination of municipal and county regulations.
- 89.19 Declaration of public purpose of ordinance.

*(Created December 21, 1961 J. Proc., p. 1996-2020; published and effective Jan. 4, 1962.)*

TO REPEAL CHAPTER 88 OF THE GENERAL ORDINANCES OF THE COUNTY OF MILWAUKEE, AS AMENDED TO AND INCLUDING DECEMBER 20, 1961, AND, PURSUANT TO AUTHORITY OF SEC. 59.07 (85) STATS. AS CREATED BY CHAP. 508, L. 1961, TO CREATE A CHAPTER 89 OF THE GENERAL ORDINANCES OF THE COUNTY OF MILWAUKEE, CREATING A DEPARTMENT OF AIR POLLUTION CONTROL, REGULATING THE EMISSION OF SMOKE AND SOLIDS, LIQUIDS, GASES, FUMES, ACIDS, BURNING EMBERS, SPARKS, PARTICULATE WASTES OR DUSTS, INCLUDING THEIR RADIO-ACTIVE FRACTIONS OR COUNTERPARTS, INTO THE OPEN AIR WITHIN THE TERRITORIAL LIMITS OF MILWAUKEE COUNTY; REGULATING THE CONSTRUCTION, RECONSTRUCTION, REPAIR, USE OF, AND ADDITIONS TO PROCESSES, CONTROL EQUIPMENT AND DEVICES AND THE APPLICATION OF FUELS AND RAW MATERIALS TO EQUIPMENT AND PROCESSES; REQUIRING NOTICE TO THE COUNTY OF MILWAUKEE OF ALL PURCHASES AND SALES OF SUCH EQUIPMENT TO

BE INSTALLED WITHIN THE COUNTY; PROVIDING FOR THE ESTABLISHMENT OF FEES FOR EXAMINATION OF PLANS, INSPECTIONS, TESTS, ISSUANCE OF PERMITS FOR EQUIPMENT AND CERTIFICATES OF OPERATION; ESTABLISHING PROCEDURES REGARDING THE TAKING OF APPEALS; PROVIDING FOR THE DETERMINATION OF A FUEL SHORTAGE EMERGENCY AND THE EFFECT THEREOF; PROVIDING FOR COMMENCEMENT OF ACTIONS TO ENJOIN ACTS, THREATS OF ACTS AND THE PROCURING OR SUFFERING OF ACTS TO BE DONE IN VIOLATION OF THIS ORDINANCE; AND PROVIDING PENALTIES FOR THE VIOLATION OF ANY OF THE PROVISIONS OF THIS ORDINANCE. PURSUANT TO AUTHORITY OF SEC. 59.07 (85) STATS. 1961, CREATED BY CHAPTER 508, L. 1961, NINETEEN NEW SECTIONS OF THE GENERAL ORDINANCES OF THE COUNTY OF MILWAUKEE ARE CREATED TO BE NUMBERED 89.01 TO 89.19, INCLUSIVE, WHICH MAY BE REFERRED TO AS CHAPTER 89 OF THE GENERAL ORDINANCES, AND TO READ AS FOLLOWS:

**89.01 Creation of Department of Air Pollution Control.** There is hereby created a Department of Air Pollution Control of the County of Milwaukee, which shall consist of the following:

(1) A Director to be appointed by the County Executive under civil service subject to confirmation by the County Board.

(2) A Deputy Director, who shall be appointed under civil service by the Director, and who shall be authorized to perform all powers and duties of the Director in his absence or disability and under his direction.

(3) Such other employees as may, in the opinion of the County Board of Supervisors, be necessary for the proper performance of the work of said department, and who shall be paid such salaries as may be fixed by the County Board, and who shall be appointed under civil service by the Director.

(4)(a) An advisory Board of five persons who shall be graduate engineers representing a cross section of the various phases of air pollution or its control as well as with industrial processes and equipment, and whose experience and training qualifies them to give competent technical advice to the Director or to the County Board.

(b) Three members of the Advisory Board shall constitute a quorum provided that each recommendation of such Board shall be adopted by the affirmative vote of at least three members of the board.

(c) The members first appointed shall be appointed for terms of one, two, three, four and five years respectively and thereafter members shall be appointed for five year terms. Appointments to the Board shall be made by the County Executive subject to confirmation by the County Board. The County Executive shall annually appoint one of the members as chairman. The Advisory Board shall annually elect a secretary. The members of the board shall serve without pay. The terms of each member shall commence on January 1. In the year 1961, the County Executive may appoint an interim Advisory Board to serve until January 1, 1962.

(d) The Advisory Board shall meet at least bi-monthly and at such

additional times as may be called by the chairman. The chairman shall call a meeting upon the written request of at least three members of the Advisory Board. The Advisory Board shall keep minutes of its proceedings which shall clearly show the official actions of the Advisory Board and the vote of any member of the Advisory Board on any question. Such minutes shall be made available to the Director, County Executive, Chairman of the County Board, the Chairman of the County Highway Committee and to the members of the Advisory Board. A copy of such minutes shall be on file in the department office available for public inspection.

(5)(a) An Appeal Board consisting of five members who shall be appointed by the County Executive subject to confirmation by the County Board, for a term of five years, except that of the initially appointed board, one member shall serve for one year, one member for two years, one member for three years, one member for four years and one member for five years, the terms of each member to commence on January 1.

(b) Such members shall be persons of good reputation who have been actively identified with the development and improvement of Milwaukee County or its constituent municipalities and who shall not be interested in the sale of any fuel, process or control equipment or control device. One of such members shall be a practicing attorney and one a professional engineer. A lawyer member of such board shall serve as chairman thereof. The Appeal Board shall annually elect a secretary. Appeal Board members shall serve without compensation.

(c) Such Appeal Board may adopt, amend or repeal from time to time such of its procedural rules and regulations as it may deem necessary to carry into effect its duties as prescribed by this ordinance. When adopted, such rules shall be published once in the official county newspaper.

(d) Meetings of the Appeal Board shall be held at the call of the chairman whenever necessary to process grants of periods of grace as provided in Section 89.15 of this ordinance and when necessary to process appeals as provided in Section 89.17.

(e) The chairman, or the acting chairman in his absence, may compel the attendance of witnesses and may administer oaths.

(f) The Appeal Board shall keep minutes of its proceedings, including records of its hearings or of appeals and other official actions.

(g) Every rule and regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Appeal Board shall be filed immediately in the department's office and with the Chairman of the County Board and shall be open for public inspection.

(h) The presence of three members of such Appeal Board at any meeting thereof shall constitute a quorum, and an affirmative vote of a majority of a quorum or of the members present at any meeting in excess of a quorum shall be necessary to any determination by the Appeal Board. The Appeal Board shall keep minutes of its proceedings which shall clearly show the official actions of the Appeal Board and the vote of any member of the Appeal Board on any question.

(i) The County Clerk shall be ex-officio secretary of the Appeal Board in all appeals brought before it.

**89.02 Definitions.** For the purpose of this ordinance, whenever any of the following words or terms are used herein, they shall have the meaning ascribed to them in this section.

(1) **ADVISORY BOARD**—The board appointed by the County Executive to act as advisors to the Director of the Department of Air Pollution Control of the County of Milwaukee and to the County Board.

(2) **AIR POLLUTANTS**—Smoke, solids, liquids, gases, fumes, acids, burning embers, sparks, particulate wastes or dusts, including their radioactive fractions or counterparts.

(3) **APPROVED**—Approved by the Director.

(4) **APPURTENANCE**—Any structure, device, mechanism or accessory part having any effect upon, or relationship to the operation or performance of any process or control equipment.

(5) **BTU**—British thermal unit.

(6) **BOARD OF APPEALS**—The Board of Appeals as created by Section 89.01 (5).

(7) **BUILDING FIRES**—A "new fire being built" shall be held to mean the period during which a fresh fire is being started and does not mean the process of replenishing an existing fuel bed with additional fuel.

(8) **CERTIFICATION NUMBER**—A number assigned to a particular solid fuel certified by the Director to distinguish it from any other certified solid fuel.

(9) **CERTIFICATE OF OPERATION**—A certificate issued by the Director authorizing the use of any process or control equipment for the period indicated after it has been found that it can be operated in compliance with the ordinance.

(10) **CERTIFIED SOLID FUEL**—Solid fuel the volatile content of which is 23% or less on a moisture and ash free basis and which has been certified for use as a certified solid fuel by the Director. Provided, however, that a solid fuel which contains volatile matter in excess of 23% on a moisture and ash free basis, shall be accepted as a certified solid fuel upon certification by the Director that such solid fuel meets the same standards in regard to smoke production as that of a solid fuel containing 23% or less of volatile matter on a moisture and ash free basis. To qualify such solid fuel for certification, the solid fuel supplier shall:

(a) Furnish to the Director complete specifications, data and information as the Director may require concerning the solid fuel for which certification is requested.

(b) Furnish to the Director a supply of the fuel for which certification is requested, adequate to conduct whatever tests the Director deems necessary to establish whether it meets the required standards as to smoke production.

(c) Pay to the Director in advance all expenses necessary to make the required tests.

(11) **CLEANING FIRES**—The term "when the fire box is being cleaned out" shall mean the period during which the fuel bed, including ash and clinker, is being completely removed from the grate surface.

This operation may be done by cleaning portions of the grate times. This does not mean that the act of shaking the grate ash or individual clinkers from the fuel bed constitutes an offense under the fires as interpreted in this ordinance.

(12) COMBUSTION EQUIPMENT—Any equipment, device having a chamber or space wherein the combustion of any fuel or substance is burned, consumed, oxidized or is in a gaseous state accompanied by the liberation of heat and for which a control, and for which a flue, vent, chimney, stack or duct is required to conduct the products of combustion from the equipment to the open air or atmosphere.

(13) CONTROL EQUIPMENT—Any equipment whos purpose is to control a process or process equipment and thus reduce or prevent the emission of air pollutants to the atmosphere, or to control the emission of air pollutants to the atmosphere, or to control the emission of air pollutants to the atmosphere.

(14) COUNTY—The County of Milwaukee, Wisconsin

(15) COUNTY BOARD—The County Board of Supervisors of Milwaukee County.

(16) COUNTY EXECUTIVE—The County Executive of Milwaukee.

(17) DIRECTOR—The Director of the Department of Control of the County of Milwaukee.

(18) DUST—Gas-borne or air-borne particles larger than 10 microns in mean diameter. (Same for fly ash.)

(19) DUST-SEPARATING EQUIPMENT—Any device used to separate dust from the gas medium in which it is carried.

(20) EMISSION—Emission into the open air.

(21) FUEL BURNING EQUIPMENT—Any furnace, refuse-burning equipment, dust-separating equipment, boiler, steam engine, mechanism, stack, chimney, or structure used in the burning of fuel or other combustible material.

(22) FUMES—Gases, vapors or particulates that are capable of acting as to create an unclean, destructive, offensive or hazardous condition.

(23) HEAT ABSORBING EQUIPMENT—Mechanical component parts thereof, such as the radiant or convective surface of a boiler, waterwall, water heater, superheater, reheater, heater installed in conjunction with fuel-burning equipment for the purpose of receiving, storing, transmitting, utilizing or converting energy liberated from the burning of fuels.

(24) INSPECTOR—Any person who is duly authorized by the Department of Air Pollution Control, County of Milwaukee to perform the duties of inspection.

(25) INSTALLATION PERMIT—A permit issued by the Department of Air Pollution Control, County of Milwaukee authorizing the construction, installation, alteration, or use of a process or control equipment in accordance with plans and specifications approved by the Director.

(26) INTERNAL COMBUSTION ENGINE—Any engine in which the combustion of gaseous, liquid or pulverized solid fuel takes place in one or more cylinders.

(27) MECHANICAL FIRING—A means of firing through a grate.

device.

(28) **OPACITY**—State of a substance which renders it partially or wholly impervious to the rays of light.

(29) **OPEN FIRE**—Any fire wherein the products of combustion are emitted into the open air and are not directed thereto through a stack or chimney.

(30) **OPERATING PERMIT**—A permit issued by the Director authorizing the use of any process or control equipment for test purposes to determine whether or not it can be operated in compliance with this ordinance. (See Certificate of Operation.)

(31) **ORDINANCE**—The whole or part of Chapter 89 of the General Ordinances of the County of Milwaukee.

(32) **PERSON**—Any owner, tenant, lessee, individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, department, bureau, agency, or other entity recognized by law as the subject of rights and duties.

(33) **PROCESS EQUIPMENT**—Any equipment which causes, creates, modifies, handles, conveys, controls, discharges or comes in contact with air pollutants which are subsequently discharged to the atmosphere. Processes and process equipment including, but not limited to, are: fuel burning, combustion, heat absorbing, smelting, roasting, grinding, drying, conveying, baking, batching, melting, sintering, cleaning, pickling, galvanizing, pulverizing, painting, calcining, briquetting and sizing equipment.

(34) **RAILROAD LOCOMOTIVE**—Any railroad locomotive or railroad vehicle using a liquid, solid, or pulverized solid fuel.

(35) **RINGELMANN CHART**—The standard by which the shade or density of smoke is to be measured is the Ringelmann Chart published by the United States Bureau of Mines. This chart is incorporated in this ordinance as Exhibit 1.

(36) **SMOKE**—All gaseous products of combustion, together with carbon, dust, fly ash, and all other particulate solids in combustion gases in sufficient density to be observable.

(37) **SEAL OR SEALING PROCESS EQUIPMENT OR PREMISES**—A device installed by the Director so as to prevent use of the process equipment or premises causing the violation or from which violations originate.

(38) **STACK OR CHIMNEY**—Stack, chimney, flue, conduit, or opening arranged for the emission into the open air of air pollutants.

(39) **VOLATILE**—The gaseous constituents of solid fuels as determined by the Standard American Society of Testing Materials D 271 Procedure (1944).

(40) **WASTE**—The waste products of industrial processes, such as mineral wool, lint, peanut hulls, grain chaff, etc.

(89.02 (37) Amended Sept. 12, 1963 J. Proc., p. 1254-1255, 1257; published and effective September 26, 1963)

**89.03 Duties of the Department of Air Pollution Control.** (1) The duties of the Director, who shall be responsible for the administration

**of air pollution control in the County of Milwaukee, include without limitation because of enumeration:**

- (a) The investigation of complaints and the making of inspections**



and observations of air pollution conditions.

(b) The issuance of permits, certificates and notices under this ordinance; the keeping of applications, specifications, plans, permits, certificates, violations, complaints, and other records on file for department purposes only.

(c) The examination of so much of the plans or specifications for all new buildings and for the alteration of all existing buildings as may be necessary to assure that they are in accordance with Section 89.05 and the rules and regulations established by this ordinance.

(d) The examination of the application and plans or specifications for the construction, installation or alteration of any process or control equipment or any equipment or device pertaining thereto, and, if found to meet the requirements of the rules and regulations, the issuance of an Installation Permit.

(e) The inspection of the installation of all equipment for which a permit has been issued, and when found that the work is completed in accordance with the rules and regulations, the issuance of an Operating Permit, and thereafter when operation is demonstrated to comply with the provisions of this ordinance, the issuance of a Certificate of Operation.

(f) The publication and dissemination of information on methods of air pollution reduction.

(g) The enlistment of the co-operation of civic, technical, scientific and educational societies.

(h) To institute necessary proceedings to prosecute violations of this ordinance and to compel the prevention and abatement of the emission of air pollutants and nuisances arising therefrom.

(2) The duties of the Advisory Board shall include the following:

(a) To act as advisor to the Director.

(b) To consider and make recommendations as to such rules and regulations as may be presented by the Director.

(c) To consider and make recommendations to the County Board of Supervisors on any matters deemed to be in the best interest of effective air pollution control for Milwaukee County.

(3) The duties of the Board of Appeals shall be as set forth in Section 89.01 (5), 89.15 and 89.17 hereof.

**89.04 Establishment of Rules and Regulations.** (1) The Director is hereby authorized and directed to prepare, with or without the advice of the Advisory Board, and present to the County Board of Supervisors for consideration, rules and regulations for the installation and operation of process or control equipment and all other devices susceptible for use in such a manner as to violate the provisions of the ordinance; as to the kind of fuel to be used for various types of equipment; and as to necessary auxiliary devices that aid in meeting the requirements of this ordinance. When adopted by the County Board, such rules and regulations shall have the force and effect of an ordinance. The County Board of Supervisors, with or without the recommendation of the Director or the Advisory Board, may from time to time alter, amend, or rescind such rules and regulations and promulgate such additional rules and regulations

as are deemed advisable. Such rules and regulations as may be prepared, revised, amended or rescinded shall be made effective thirty days after their publication in the official newspaper of the County.

(2) Where reference is made in this ordinance to the standards or recommended practices of national technical societies or associations, such rules or regulations shall form and be considered an integral part of the ordinance in the same manner and extent as if fully reproduced therein. Not less than two copies of such standards or recommended practices of national technical societies and associations shall be kept on file at all times in the office of the Department of Air Pollution Control and shall be available for consultation by the public.

**89.05 Installation Permit, Operating Permit, and Certificate of Operation.** (1) No person shall construct, install, reconstruct or alter any process or control equipment pertaining thereto, for which a fee is required under Section 89.10, for use within the county until an application, including not less than two sets of plans or specifications, or both, of the process or control equipment and structures or buildings used in connection therewith, has been filed by the person or his agent in the office of, and has been approved by, the Director and an Installation Permit issued by him for such construction, installation or alteration. All Applications for Installation Permits shall indicate whether any work has been done prior to securing the Installation Permit.

(2) The above mentioned plans or specifications shall show the form and dimensions of the process or control equipment, together with the description and dimensions of the building or part thereof in which such process or control equipment is to be located, including the means provided for admitting the air for combustion processes, the character of the fuel to be used, the maximum quantity of such fuel to be burned per hour, the kind and amount of raw materials processed, the expected air pollutant emission rate, the operating requirements, and the use to be made of such process or control equipment shall be stated.

(3) Maintenance or repair which does not change the capacity of such process or control equipment and which does not involve any change in the method of processing or affect the emission of air pollutants therefrom, may be made without an Installation Permit.

(4) An emergency repair other than as specified in sub-section (3) of this section may be made prior to the application for an Installation Permit if serious consequences may result if the repair were deferred. When such repair is made, the person concerned shall notify the Director on the first business day after the emergency occurred and file an application for an Installation Permit if directed to do so by the Director.

(5) Where work is begun in violation of Installation Permit requirements, the Director may grant such permit, conditional upon removal of all faulty work. The Installation Permit fee shall be doubled in such cases.

(6) An application shall be approved or rejected within ten days after it is filed in the office of the Director. Upon the approval of the application and upon the payment of the prescribed fees, the Director shall issue a permit for the construction, installation, or alteration of such process or control equipment. Failure to approve the application

within ten days shall be deemed a rejection.

(7) No construction, installation, reconstruction, or alteration shall be made which is not in accordance with the plans, specifications, and other pertinent information upon which the Installation Permit was issued without the written approval of the Director.

(8) Violation of the Installation Permit shall be sufficient cause for the Director to stop all work, and he is hereby authorized to seal the installation. No further work shall be done until the Director is assured that the condition in question will be corrected and that the work will proceed in accordance with the Installation Permit.

(9) No person shall violate the seal on any process or control equipment that has been sealed at the direction of the Director unless authorized by the Director in writing to do so.

(10) If construction, installation, reconstruction or alterations is not started within one year of the date of the Installation Permit, the permit shall become void and all fees shall be forfeited, unless an extension of time is warranted and granted by the Director.

(11) No person shall operate or cause to be operated any new or altered process or control equipment or any equipment pertaining thereto for which an Installation Permit was required or was issued until an inspection has been made by the Director and an Operating Permit is issued. The person responsible for the installation, construction or alteration of any process or control equipment for which Installation Permit is required, shall notify the Director when the work is completed and ready for final inspection. An Operating Permit may be issued in accordance with this sub-section upon payment of fees, as required in Section 89.10 for existing process or control equipment where such equipment, related heat absorbing equipment, appurtenances or class of fuel used or to be used, are found to be at variance with the requirements of Section 89.06 or 89.09. The Director is hereby authorized to seal the equipment in operation for which an Operating Permit was not obtained as required in this ordinance.

(12) After the Operating Permit has been issued and it is demonstrated to the satisfaction of the Director that the process or control equipment can be operated in compliance with this ordinance, a Certificate of Operation shall be issued by the Director. Said Certificate of Operation shall be kept posted on or near the installation for which it was issued. The Certificate of Operation shall properly identify the equipment to which it pertains and shall specify the class of fuel, type of raw materials used, if any, for which the equipment and appurtenances have been designed or which has been successfully used in the operating test. Failure to operate successfully under test within the limitations and requirements of the Ordinance under an Operating Permit shall constitute sufficient grounds for ordering changes in the process or control equipment or appurtenances before a Certificate of Operation can be granted. Responsibility for proof, and all expenses incurred in running the tests under the Operating Permit shall be borne by the person owning, operating or in charge of control of such equipment, or their agents. The Director may, in his opinion the nature of the process or control equipment and its appurtenances in consideration of the use to which it

is to be put so justifies, waive the demonstration or test operation under the Operating Permit, but such waiver shall in no manner provide immunity from prosecution for violations of the requirements of Section 89.11 of the ordinances. When a Certificate of Operation is refused, the Director is authorized to seal the process or control equipment until the person required to procure the Certificate of Operation shall have complied with the provisions of this ordinance.

(13) The issuance by the Director of any Installation Permit, Operating Permit, or Certificate of Operation shall not be held to exempt the person to whom the permit or certificate was issued or who is in possession of the same, from prosecution for the emission of air pollutants prohibited by this ordinance.

(14) The provisions of this section shall not apply to locomotives or steamships.

*(89.05 (1) repealed & recreated July 21, 1964 J. Proc., p. 1132-1134, 1139; published & effective July 30, 1964.*

*89.05 (former section (13)) repealed July 21, 1964 J. Proc., p. 1132-1134, 1139; published & effective July 30, 1964.*

*89.05 (13), (14) renumbered respectively from sections (14), (15) July 21, 1964 J. Proc., p. 1132-1134, 1139; published & effective July 30, 1964)*

**89.06 Sale, Use, or Consumption of Certain Fuels.** (1) The sale, delivery for use, or use within the County of solid fuel for hand-fired equipment which is not a certified solid fuel is prohibited.

(2) Solid fuel which is not a certified solid fuel can be used only in approved mechanical fuel-burning equipment.

(3) Each person selling volatile solid fuel for use in the County shall furnish the buyer with a bill of sale or delivery slip on which is plainly recorded the date of delivery, the name of the seller, the name of the buyer, the quantity delivered, and, if the fuel is certified solid fuel, a statement to that effect.

(4) The provisions of this section shall not apply to steamships.

**89.07 Fuel Shortage Emergency.** Whenever the Director shall recommend to the County Board that an emergency situation exists whereby, because of the shortage of certified solid fuel or other fuels, there is likelihood that the provisions of Section 89.06 cannot be complied with by suppliers of and vendors of such fuel in the County during a certain period, or it is not possible to operate within the provisions of Section 89.11, the County Board of Supervisors, upon being satisfied that such emergency does in fact exist, may declare the existence of an emergency period or waive the limitations of Sections 89.06 and 89.11 for the same period.

**89.08 Reporting of Sales and Purchases.** (1) It shall be the duty of all persons engaged in the business of selling process or control equipment to report to the Director in accordance with rules and regulations adopted the sale of such equipment to be installed within the County of Milwaukee; and it shall be the duty of every person purchasing

any of said equipment to give to the seller a statement in writing signed by such purchaser or his duly authorized agent setting forth the correct street and house number address of the building in which such equipment is to be installed. The report herein required shall be in writing and shall be delivered by the seller to the Director within seven days after such sale, and shall contain the name and address of the purchaser and the location of the building in which such equipment is to be installed or used.

(2) For the purpose of obtaining facts with respect to the compliance with this section, the Director is hereby authorized to demand and shall be furnished with a true and correct report at any time showing in detail the equipment sold, and the names and addresses of the persons purchasing said equipment, together with the addresses of the buildings in which such equipment is to be installed.

(3) Any person violating any of the provisions of this section or making any false statement or report in connection with the sale of any equipment mentioned in this section shall be subject to the fines and penalties hereinafter provided.

(4) The provisions of this section shall not apply to wholesale transactions made for the purpose of resale.

**89.09 Equipment.** (1) All solid fuel-burning equipment shall be equipped for mechanical firing with a stoker, pulverized fuel burner, or other approved device, or a certified solid fuel shall be used.

(2) All installations, excepting stand-by equipment placed in use in an emergency and used for a period or aggregate of periods of not to exceed 10% of any one year, using pulverized fuel burners, spreader type stokers, or other similar solid fuel suspension-burning type of equipment, shall be provided with approved dust-separating equipment. The Director shall be notified of such emergency within twelve hours after the happening thereof.

(3) The provisions of this section shall not apply to steamships.

(4) Where existing process or control equipment covered by the provisions of the ordinance are found by tests to be incapable of operation within the limitations and requirements specified in Section 89.11, changes shall be made in such equipment, apparatus, devices or structures in accordance with orders issued by the Director, subject to appeal as provided for in Section 89.17.

**89.095 Suitable Process or Control Equipment and Fuels.** (1) All process or control equipment related heat-absorbing equipment, appurtenances, fuels or raw materials used or to be used shall be suitable under operating conditions for compliance with requirements of Section 89.11.

(2) Where process or control equipment, related heat-absorbing equipment, appurtenances, fuel or raw materials are found to be unsuitable for lawful operation within the limitations prescribed in Section 89.11, the Director may order changes to be made in such equipment, appurtenances, fuel or raw materials as may be necessary to secure, under operating conditions, compliance with requirements of said Section 89.11 irrespective of compliance with the requirements of Section 89.06

and 89.09. The observation of three violations of Section 89.11 in any consecutive twelve-month period shall be deemed sufficient cause for finding such equipment, appurtenances, fuel or raw materials unsuitable as hereinabove specified, and for the making of such order. Any person, upon receipt of an order requiring such changes to be made, shall forthwith notify the Director what period of time is needed to comply with such order and shall submit plans and specifications indicating the work to be done or specifications of the fuel and raw materials to be used. Where required, an Installation Permit, Operating Permit, and Certificate of Operation shall be secured in accordance with Section 89.05.

*(89.095(3), (4) repealed July 21, 1964 J. Proc., p. 1132-1134, 1139; published & effective July 30, 1964)*

**89.10 Fees.** (1) The following fee schedule shall apply to all new, reconstructed or altered combustion process equipment installed in Milwaukee County. This is the total fee to be charged for an Installation Permit, Operating Permit and Certificate of Operation as required in Section 89.05.

( See attached air pollution fee schedule)

(2) Upon receipt of a written request for any persons for quantitative and qualitative tests of emissions to the open air from any source for which such person is responsible under the provisions of the ordinance, the Director may authorize and arrange for such tests to be conducted at the expense of such person by qualified employees of the Department of Air Pollution Control. An estimate of cost shall first be submitted to the person making the request, stating the charges per day of the field test party and for other laboratory and office work which may be necessary. Upon written approval of the requesting person to the terms and amount of the estimated costs, the tests may proceed, provided safe and suitable facilities for access to the test location have been provided by the person requesting such test work. Scaffoldings shall conform to the requirements of Chapter 35 - Safety in Construction" of the Industrial Commission Codes of the State of Wisconsin. The charge shall be computed on the basis of actual costs for labor, materials and suitable allowance for depreciation to equipment and apparatus.

(3) The following fee schedule shall apply to all new, reconstructed or altered incinerator equipment installed in Milwaukee County. The total fee to be charged for an Installation Permit, Operating Permit, and Certificate of Operation required by Section 89.05 shall be \$1.00 per sq. ft., or any additional fraction thereof, of combined grate and hearth area with a minimum fee of \$2.00 and a maximum fee of \$100.00.

# AIR POLLUTION FEE SCHEDULE FOR COMBUSTION PROCESSES

(Based on Maximum Hourly Fuel Consumption)

## REFERENCE TABLE

Pounds of Coal or Coke	Gallons of Oil	Ft. <sup>3</sup> of Natural or LP Gas	Registration or Permit Fee	Boiler Horsepower*	Ft. <sup>2</sup> Steam Radiation** (EDR)	Btu/Hour x 1000 Input
33 to 50	3 3 to 5 0	501 to 750	\$ 10 00	12 0 to 18 0	1,500 to 2,300	501 to 750
51 to 120	5 1 to 12 0	751 to 1 800	15 00	18 1 to 43 0	2,301 to 5,400	751 to 1,800
121 to 400	12 1 to 40 0	1 801 to 6,000	20 00	43 1 to 140 0	5,401 to 18,000	1,801 to 6,000
401 to 800	40 1 to 80 0	6 001 to 12 000	30 00	141 to 290	18,001 to 36,000	6,001 to 12,000
801 to 1,200	80 1 to 120 0	12 001 to 18,000	35 00	291 to 430	36 001 to 54,000	12,001 to 18,000
1 201 to 4 000	120 1 to 400 0	18 001 to 60,000	40 00	431 to 1 400	54 001 to 180,000	18 001 to 60,000
4 001 to 6,500	400 1 to 650 0	60,001 to 97,500	50 00	1,401 to 2,300	180 001 to 290,000	60,001 to 97,500
6,501 to 12 000	650 1 to 1200 0	97 501 to 180 000	75 00	2,301 to 4,300	290,001 to 540,000	97,501 to 180,000
12,001 to 40,000	1200 1 to 4000 0	180 001 to 600 000	100 00	4,301 to 16 000	540,001 to 1 800 000	180,001 to 600 000
Over 40 000	Over 4000 0	Over 600 000	150 00	Over 16 000	Over 1 800 000	Over 600,000

\* - Approx. 80% Boiler Efficiency

\*\* - Approx. 72% Overall Thermal Efficiency (Boiler and Line Loss)

## EXEMPTIONS:

- 1 Dwelling units less than 4-families are exempted.  
Combination residential and commercial installations shall be governed by this fee schedule.
2. This fee schedule does not apply to incinerators.

(89.10 Amended July 21, 1964 ] Proc., p. 1132-1134, 1139, published & effective July 30, 1964)

**89.11 Limits of Emission and Standards of Measurement.** (1) IN GENERAL. (a) *Ordinary Operation.* No person shall cause, suffer, or allow to be emitted into the open air from any stack or chimney, process or control equipment, internal combustion engine, premises, open fire, or any other source, smoke the shade or density of which is equal to or greater than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke of No. 2 Ringelmann density, except that smoke the shade, density or opacity of which is equal to but does not exceed No. 2 of the Ringelmann Chart may be emitted for a period or periods of not to exceed two minutes in any thirty-minute period and except when the fire-box is being cleaned out or a new fire is being built therein, or when a break-down of equipment occurs such as to make it evident that the emission was not



reasonably preventable.

(b) *Clean-Outs; New Fires.* When the fire-box is being cleaned out or a new fire is being built therein, smoke the shade or density of which is equal to but does not exceed No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree equal to but does not exceed smoke of No. 2 Ringelmann density, may be emitted into the open air for a period or aggregate of periods not exceeding nine minutes in any one hour; or smoke of unlimited shade, density or opacity may be emitted into the open air for a period or aggregate of periods not exceeding five minutes in any one hour. The emission of smoke permitted in this paragraph (b) shall be in the alternative and not cumulative. No person shall cause, suffer, or allow to be emitted into the open air during the cleaning out of a fire-box or the building of a new fire therein, smoke the shade, density or opacity of which exceeds the limits permitted by the provisions of this paragraph (b), nor for a longer period than herein permitted.

(c) *Exceptions.* The provisions of paragraphs (a) and (b) of this subsection (1) shall not apply to railroad locomotives in or ready for service nor to steamships.

(2) **LOCOMOTIVES.** (a) *In or Ready for Service.* Smoke the shade, density or opacity of which is unlimited may be emitted into the open air from any railroad locomotive in or ready for service for a period or aggregate of periods not to exceed forty-five seconds in any three-minute period. During the remainder of such three-minute period, smoke the shade or density of which is equal to but does not exceed No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree equal to but does not exceed smoke of No. 2 Ringelmann density, may be emitted. No person shall cause, suffer or allow to be emitted into the open air from any railroad locomotive in or ready for service, smoke the shade, density or opacity of which exceeds the limits permitted by the provisions of this paragraph (a), nor for a longer period than herein permitted, except when a break-down of equipment occurs such as to make it evident that the emission was not reasonably preventable.

(b) *Clean-Outs; New Fires; Diesel Startup.* When a fire-box is being cleaned out or a diesel locomotive is first started up or a diesel locomotive which has been idling over a period of one shift is put back into use or a new fire is being built in a railroad locomotive, smoke the shade or density of which is equal to but not greater than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree equal to but not greater than smoke of No. 2 Ringelmann density, may be emitted into the open air for a period or aggregate of periods not to exceed nine minutes in any one hour; or smoke the shade, density or opacity of which is unlimited may be emitted into the open air for a period or aggregate of periods not exceeding five minutes in any one hour. Emission of smoke as permitted by the provisions of this paragraph (b) shall be in the alternative and not cumulative. No person shall cause, suffer or allow to be emitted into the open air from any railroad locomotive while the fire-box thereof is being cleaned out or a diesel locomotive is first started up or a diesel locomotive which has

been idling over a period of one shift is put back into use or a new fire is being built therein, smoke the shade, density or opacity of which exceeds the limits permitted by this paragraph (b), nor for longer periods than herein permitted.

(3) STEAMSHIPS. (a) *When Navigating or Maneuvering.* A steamship while navigating or maneuvering in the County inside the Milwaukee Bay breakwater may emit into the open air smoke the shade, density or opacity of which is unlimited for a period or periods aggregating not more than three minutes in any fifteen-minute period. During the remainder of such fifteen-minute period, smoke the shade or density of which is less than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree less than does smoke of No. 2 Ringelmann density, may be emitted. No steamship shall emit and no person shall cause, suffer, or allow to be emitted into the open air from any steamship situated as hereinabove set forth, smoke the shade, density or opacity of which exceeds the limits permitted by this paragraph (a), nor for longer periods than herein permitted.

(b) *Steamships Docked.* When any steamship is docked within the County, except as hereinafter provided in paragraphs (c), (d), and (e) of this subsection (3), it may emit smoke the shade or density of which is less than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree less than does smoke of No. 2 Ringelmann density, except that during the last fifteen minutes before such steamship leaves such dock, such steamship may emit smoke the shade or density of which does not exceed No. 3 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree greater than does smoke of No. 3 Ringelmann density, for a period or aggregate of periods not to exceed three minutes; but provided, further, that such permitted emission shall not be cumulative to the emission permitted by paragraph (d) of this subsection. No steamship shall emit, and no person shall cause, suffer or allow to be emitted into the open air from any steamship situated as hereinabove set forth, smoke the shade, density or opacity of which exceeds the limits permitted by this paragraph (b), nor for longer periods than herein permitted.

(c) *Self-Unloading Steamships.* Steamships equipped with self-unloading machinery which is operated by power from the main power plant of such steamship may, while docked in the County and while such self-unloading machinery is actually and necessarily operating in the discharge of cargo, emit smoke the shade, density or opacity of which is unlimited for three minutes in any twelve-minute period. During the remainder of such twelve-minute period, such steamship so equipped and while so operated may emit smoke the shade or density of which is less than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree less than does smoke of No. 2 Ringelmann density. No steamship so equipped and while so operated shall emit and no person shall cause, suffer or allow to be emitted into the open air from such steamship smoke the shade, density or opacity of which exceeds the limits permitted by the provisions of this paragraph.

(d) *Clean-Outs; New Fires.* When a fire-box is being cleaned out or a new fire is being built therein in a steamship or tug-boat, or such

steamship or tug-boat is undergoing inspection by a Marine Inspector in accordance with regulations of the United States Coast Guard, such steamship or tug-boat may emit into the open air smoke the shade or density of which is equal to No. 2 of the Ringelmann Chart or less, or of such opacity as to obscure an observer's view to a degree equal to or less than does smoke of No. 2 Ringelmann density, for a period or aggregate of periods of not to exceed nine minutes in any one hour, or smoke the shade, density or opacity of which is unlimited for a period or aggregate of periods of not to exceed five minutes in any one hour. The emission of smoke permitted in this paragraph (d) shall be in the alternative and not cumulative. No steamship shall emit and no person shall cause, suffer or allow to be emitted into the open air from any steamship while its fire-box is being cleaned out or a new fire is being built therein, or said marine inspector's inspection is being made, smoke the shade, density or opacity of which exceeds the limits permitted by the provisions of this paragraph, nor for longer periods of time than is herein permitted.

(e) *Exemptions; Distress Operation; First Annual Entry Into Milwaukee Harbor.* The provisions of this subsection (3) shall not apply to a steamship which is navigated or maneuvered in the County for the sole purpose of finding protection from unsafe conditions of navigation, provided that when such unsafe conditions cease, such steamship shall at once become subject to the provisions of said subsection. The provisions of this subsection (3) shall not apply to a steamship making its first call at the Port of Milwaukee in any calendar year.

(4) TUG-BOATS. (a) *When Navigating or Maneuvering Under Own Power.* A tug-boat, while navigating or maneuvering under its own power in the County inside the Milwaukee Bay breakwater and not engaged in towing a steamship may emit into the open air smoke the shade, density or opacity of which is unlimited for a period or periods aggregating not more than three minutes in any fifteen-minute period. During the remainder of such fifteen-minute period, smoke the shade or density of which is less than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree less than does smoke of No. 2 Ringelmann density, may be emitted. No tug-boat shall emit and no persons shall cause, suffer or allow to be emitted into the open air from any tug-boat situated as hereinabove set forth smoke the shade, density or opacity of which exceeds the limits permitted by this paragraph (a), nor for longer periods than herein permitted.

(b) *When Towing Steamships.* When a tug-boat is towing a steamship within the County inside the Milwaukee Bay breakwater, it may emit smoke the shade, density or opacity of which is unlimited for a period or periods not exceeding three minutes in any twelve-minute period, and during the remainder of such twelve-minute period smoke the shade or density of which is less than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree less than does smoke of No. 2 Ringelmann density, may be emitted. No tug-boat shall emit and no person shall cause, suffer or allow to be emitted into the open air from any tug-boat situated as hereinabove set forth

smoke the shade, density or opacity of which exceeds the limits permitted by this paragraph (b), nor for longer periods than herein permitted.

(c) *While Docked.* A tug-boat while docked in the County of Milwaukee inside the Milwaukee Bay breakwater may emit into the open air smoke the shade, density or opacity of which is unlimited for a period or periods aggregating not more than three minutes in any fifteen-minute period. During the remainder of such fifteen-minute period smoke the shade or density of which is less than No. 2 of the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree less than does smoke of No. 2 Ringelmann density, may be emitted. These permitted emissions shall not be cumulative to the emissions permitted by paragraph (d) of subsection (3) of this ordinance. No tug-boat shall emit and no person shall cause, suffer or allow to be emitted into the open air from any tug-boat situated as hereinabove set forth smoke the shade, density or opacity of which exceeds the limits permitted by this paragraph (c), nor for longer periods than herein permitted.

(5) **LIMITATION ON DUST EMISSION.** No person shall cause or allow to be emitted into the open air from any process or control equipment or to pass any convenient measuring point in the breeching or stack, dust in the gases to exceed 0.85 lb. per 1000 lb. of gases, adjusted to 12% CO<sub>2</sub> content for the products of combustion.

(6) **ASCERTAINMENT OF DUST QUANTITY.** The amount of dust or solids in the gases shall be determined, unless otherwise agreed upon by the Director and the person concerned, according to the Test Code for Dust-Separating Apparatus, 1941, and the Test Code for Determining the Dust Concentration in a Gas Stream (1957) of the American Society of Mechanical Engineers, which are hereby made a part of this ordinance by reference.

(7) **DISPOSAL OF DUST.** Dust from dust-separating equipment and from other sources in the installation which is not to be reclaimed shall be moistened and hauled in an approved manner to a county dump or other approved point of disposal. If the dust is to be reclaimed, it shall be handled in a manner satisfactory to the Director.

(8) **NUISANCES.** No person shall cause or allow to be emitted into the open air from any process or control equipment, internal combustion engine, premises, or open fire, any air pollutants in a manner to cause injury, detriment, nuisance, or annoyance, or to endanger the health or safety of any person, or to cause or have a natural tendency to cause injury or damage to business or property.

(9) **SEALING OF PROCESS EQUIPMENT OR PREMISES.** (a) *Order to Show Cause.* When any person has been notified of three or more observed and recorded violations of the applicable regulations of this section in respect to the emission of air pollutants within any consecutive twelve month period, the Director shall within twenty days thereafter further notify such person to show cause before the Director on a day certain, not less than ten nor more than twenty days from the day of the notice, why the process equipment or premises causing such violation shall not be sealed.

(b) *Notification.* In case the person so notified is not the person liable for the violation in connection with a building, process equipment

or premises, then such notice shall also be given to other persons liable as provided in Section 89.13. The notice herein provided for may be given by registered mail directed to the last known address of the person or persons to be notified, with return receipt of addressee required, or if the person or persons or their whereabouts are unknown, then by posting a notice on or near the premises at which the violations shall have occurred.

(c) *Hearing; Duty to Seal; Appeal.* Upon such certain day the person notified may appear and be heard. Upon such hearing, if the Director finds that adequate corrective means and methods have not been employed to correct the cause of such condition, then it shall be his duty to seal the process equipment or premises until such time as an Installation Permit and Operating Permit as provided under this ordinance have been applied for and issued for the process equipment or premises. The person may within ten days of such decision appeal the finding to the Appeal Board and the appeal shall stay the sealing pending the appeal. No process equipment or premises shall be sealed until expiration of the time for appeal. (See Section 89.17).

(10) VIOLATION OF SEAL PROHIBITED. No person shall violate the seal on any process equipment or premises that has been sealed at the direction of the Director, unless authorized by the Director in writing to do so.

(89.11 (9) & (10) Amended Sept. 12, 1963 J. Proc., p. 1254-1255, 1257; published and effective September 26, 1963)

**89.12 Entrance to Premises.** No person shall in any manner hinder, obstruct, delay, resist, prevent, or in any way interfere or attempt to interfere with the Director, the Deputy Director, or department employees in the performance of their duly authorized duties by refusing them entrance to the premises at reasonable hours upon identification.

**89.13 Persons Liable.** All persons owning, operating, or in charge or control of any equipment or premises who shall cause, suffer, allow, permit or participate in any violation of this ordinance either as proprietors, owners, lessees, tenants, managers, superintendents, constructors, installers, mechanics, repairmen, captains, janitors, engineers, firemen, or otherwise, shall be individually and collectively liable for any penalties imposed by this ordinance.

(89.13 Amended Sept. 12, 1963 J. Proc., p. 1254-1255, 1257; published and effective September 26, 1963)

**89.14 Penalties for Violations.** (1) Any person who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be sentenced to pay a fine of not less than \$25.00 nor more than \$50.00 for the first violation thereof, and not less than \$50.00 nor more than \$100.00 for each succeeding violation, together with the cost of the action, and in default of payment of said fine and costs of prosecution, the person shall be imprisoned in the county jail or the House of Correction of Milwaukee County for a period not to exceed thirty days. Each day's violation shall constitute a separate offense.

(2) The unlawful emission of air pollutants from each stack or premise shall constitute a separate offense.

(3) The Director, or the Inspectors, upon instructions of the Director, shall have authority to institute complaints against all persons

violating any provisions of this ordinance.

(4) Whenever any person has been found by the Director or his Inspectors to have repeatedly violated the provisions of Chapter 89 of the General Ordinances and particularly Section 89.11 (8) thereof, the corporation counsel is authorized and directed, upon written request of the Director and when in his opinion the facts warrant, to commence appropriate civil legal action in the name of Milwaukee County to enjoin and restrain further continuance of such violation.

(89.14 (2) Amended Sept. 12, 1963 J. Proc., p. 1254-1255, 1257; published and effective September 26, 1963)

**89.15 Period of Grace.** (1) When a person violating any of the provisions of this ordinance with respect to the emission of air pollutants, produces evidence satisfactory to the Director that he has taken all steps possible to provide for compliance with the provisions of the ordinance, but that the acquisition of the proper equipment or device cannot be obtained or effected immediately, the Director shall have the discretion in such cases to allow a period not exceeding twelve months from the date of application therefor, within which the necessary equipment or device is to be acquired and installed. In a case where the Director has granted a grace period of up to one year, and notwithstanding that the person has given a bona fide order for the equipment required to comply with the ordinance, it appears probable that such equipment will not be delivered within such grace period, the person may apply to the Board of Appeals for an extension of the grace period, serving notice of such application upon the Director. The Board of Appeals shall consider such request and within twenty days after receipt of same, if it is satisfied that there is good cause for further extension of such grace period, by written order may extend such grace period for any time not to exceed one year from the end of the grace period granted by the Director.

(2) During said period of grace granted by the Director or by the Board of Appeals, the person violating the ordinance shall not be subject to the fines or penalties herein prescribed; provided, however, that where such person fails in the time allowed to conform with the provisions of this ordinance, he shall be subject to all the fines and penalties herein prescribed dating from the date of the beginning of the period of grace permitted him.

**89.16 Maintenance of Records.** The Director shall keep in the office of the Department of Air Pollution Control all applications made, and a complete record thereof, as well as of all permits and certificates issued. He shall keep a record of all air pollution observations on all stacks and generally of the work done by the department. All such records shall be open for inspection by the public at all reasonable times.

**89.17 Appeals to Appeal Board.** (1) Any person taking exception to any decision or order of the Director in the interpretation of the Rules and Regulations ~~set forth in Section 89.20 of the General Ordinances~~ affecting such person's property or from any order sealing equipment, may appeal to the Appeal Board. Such appeal shall be taken within ten days after the decision or order complained of, by filing with the County Clerk as ex-officio secretary of the Appeal Board, a notice of appeal specifying the decision or order appealed from, the reasons for such

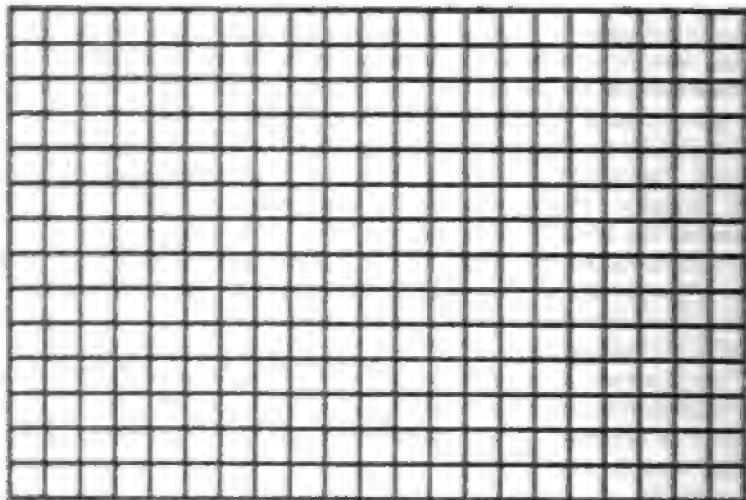
appeal, and the relief sought. At the time of filing such appeal, the appellant shall deposit \$15 with the County Clerk to cover the cost of the hearing. A copy of such notice of appeal shall be served upon the Director and upon receipt thereof he shall promptly furnish to the Appeal Board all the papers relating to the decision or order appealed from. The chairman of the Appeal Board shall set a date for the hearing of such appeal not less than five nor more than ten days after the date on which the appeal was filed with the secretary of the Appeal Board, and shall give notice thereof by mail or by service by the Sheriff to the Director and the party taking the appeal. Such appeal shall operate to stay the decision or order appealed from until the decision of the Appeal Board is rendered. The appellant may prosecute the appeal in person or by an agent or attorney. The Appeal Board shall within ten days after the conclusion of the hearing by written decision affirm, modify or set aside the decision or order appealed from, and cause a copy thereof to be promptly delivered to the appellant and the Director. Such decision shall be binding upon the appellant and the Director unless reversed by the Circuit Court of the County in certiorari proceedings. If the decision or order of the Director is affirmed by the Board of Appeals, the \$15 deposit shall be forfeited to the County. If the decision or order of the Director is modified or reversed by the Board of Appeals and the Director does not within ten days commence certiorari proceedings to review the Board's decision, the costs of the hearing shall be borne by the County, and the \$15 deposit shall be refunded to the appellant. If the Director commences certiorari proceedings, the forfeiture or refunding of the deposit shall abide the result of the court decision.

(2) The Board of Appeals is empowered to grant an extension of the grace period, as provided in Section 89.15. No deposit shall be required in case of application for such extension.

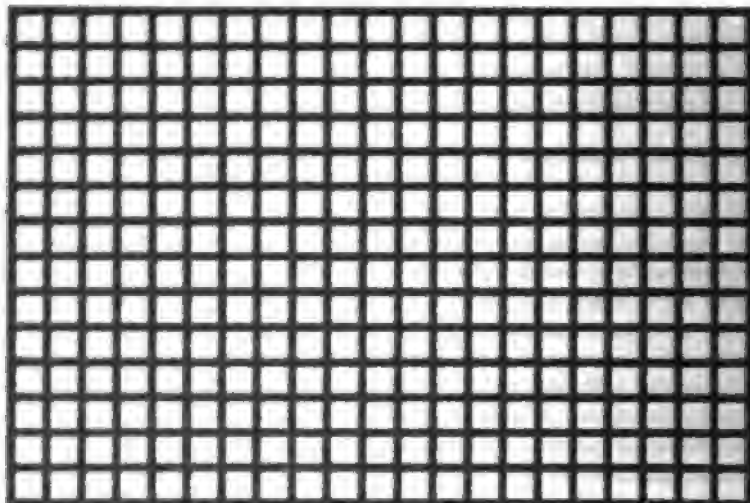
**89.18 Co-ordination of Municipal and County Regulations.** After, and subject to rules and regulations to be adopted, unless a municipality within Milwaukee County has adopted an air pollution control ordinance at least equally restrictive, no permit for the erection, construction or alteration of any building, plant or structure related in any manner to process or control equipment shall be issued by any department of any of the several municipalities in the County of Milwaukee until the Director has issued a permit covering the property under his jurisdiction to be used in the building, plant or structure as provided in Section 89.05, or has indicated that, in his judgment, the plans submitted will permit the installation of facilities adequate for compliance with the provisions of this ordinance.

**89.19 Declaration of Public Purpose of Ordinance.** It is declared that this ordinance is enacted in the interests of the public health and welfare of the residents of Milwaukee County. If any part of this ordinance shall be declared to be invalid, such invalidity shall not affect the remaining portions of this ordinance, the County Board of Supervisors hereby declaring that it would have passed such remaining portions of this ordinance notwithstanding such invalidity.

**UNITED STATES DEPARTMENT OF THE  
INTERIOR BUREAU OF MINES  
R. R. SAYERS, DIRECTOR**



**1. EQUIVALENT TO 20 PERCENT BLACK**

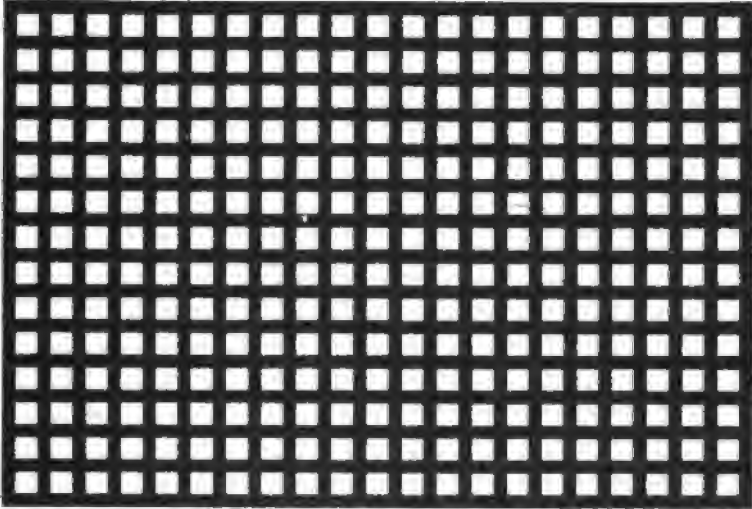


**2. EQUIVALENT TO 40 PERCENT BLACK**

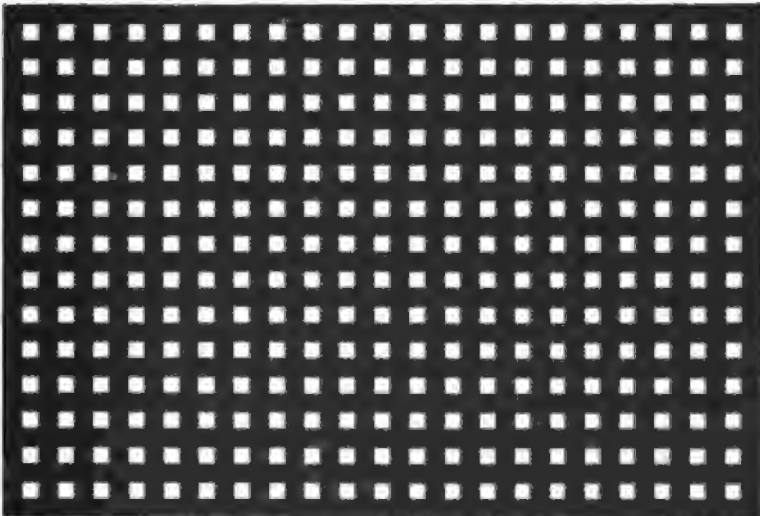
**Ringelmann's Scale for Grading the Density of Smoke**



**UNITED STATES DEPARTMENT OF THE  
INTERIOR BUREAU OF MINES  
R. R. SAYERS, DIRECTOR**



**3. EQUIVALENT TO 60 PERCENT BLACK**



**4. EQUIVALENT TO 80 PERCENT BLACK**

**Ringelmann's Scale for Grading the Density of Smoke  
EXHIBIT I**



---

# **Air Pollution Control**

## **RULES AND REGULATIONS**

**SUPPLEMENTING CHAPTER 89  
of the  
GENERAL ORDINANCE  
of  
MILWAUKEE COUNTY**

**AIR POLLUTION CONTROL  
RULES AND REGULATIONS**

(Supplementing Chapter 89 of the  
General Ordinances of the County of Milwaukee)

**REGULATION I - GENERAL PROVISIONS****RULE 1 - Emissions Permitted**

These rules shall supplement and implement Chapter 89 of the Milwaukee County General Ordinances and apply to all process equipment installations regulated thereby.

**RULE 2 - Reporting of Sales and Purchases**

All persons engaged in the business of selling process equipment covered by these Rules and Regulations and for which a fee is provided in Section 89.10 - FEES shall report the sale of this type equipment, upon forms provided by the Director, in accordance with Section 89.08 - Reporting of Sales and Purchases.

**REGULATION II - NEW, ALTERED AND RECONSTRUCTED  
COMBUSTION PROCESS INSTALLATIONS****RULE 1 - Applicability**

All new, altered and reconstructed combustion process installations for which a fee is provided in Section 89.10 shall be governed by these Rules and Regulations. These Rules and Regulations shall be effective thirty days after passage and publication in the official newspaper of Milwaukee County.

**RULE 2 - Gas-Fired Installations**

(a) The emission performance of all gas-fired burners shall conform with the requirements of the American Gas Association, Inc., Underwriters' Laboratories, Inc., Factory Mutual Association or the Factory Insurance Association.

(b) Chimney and vent sizes for all gas-fired installations shall conform to the recommendations of the boiler, furnace or burner manufacturer.

(c) All boiler or furnace rooms serving gas-fired installations shall be provided with an outside air intake for combustion that conforms

with Wisconsin Administrative Code section Ind 59.60.

(d) All atmospheric burner equipped gas-fired installations which are required by Wisconsin Administrative Code section Ind 59.67 to be vented to a chimney or flue pipe, shall be equipped with draft hoods, barometric dampers or motorized dampers.

(e) The products of combustion from all gas-fired installations shall be discharged to the atmosphere at such heights and in such manner as to prevent nuisances being created to neighboring occupancies.

### **RULE 3 – Oil-Fired Installations**

(a) The emission performance of all oil-fired burners shall conform with the requirements of Underwriters' Laboratories, Inc., Factory Mutual Association or the Factory Insurance Association.

(b) All oil-fired installations shall be installed in accordance with the recommendations of the manufacturer of the oil-burning equipment.

(c) All oil-fired installations burning heavy No. 5 or No. 6 grade fuel oils shall be equipped with suitable provision for preheating such oils to levels sufficient to give performance within the smoke emission limitations of this ordinance. Recommendations of the burner manufacturer shall be followed in this regard.

(d) Chimneys serving oil-fired installations shall conform in size and height to the recommendations of the boiler, furnace or burner manufacturer.

(e) Where heavy No. 5 or No. 6 oil is used in a boiler having a burner capacity greater than 40 gph, a smoke indicator or smoke alarm shall be provided.

(f) All boiler or furnace rooms serving oil-fired installations shall be provided with an outside air intake for combustion air that conforms with Wisconsin Administrative Code section Ind. 59.60.

(g) The products of combustion from all oil-fired installations shall be discharged to the atmosphere at such heights and in such manner as to prevent nuisances being created to neighboring occupancies.

(h) The owner of the installation may be required to provide suitable test openings at such locations as requested by the Director.

**RULE 4 - Solid Fuel-Fired Installations**

(a) All suspension solid fuel-burning installations shall be equipped with suitable dust collection equipment to insure performance within the emission limitations of this ordinance.

(b) All stoker-fired installations shall conform to recommendations on setting heights, furnace volumes, heat release, firebox dimensions, stoker size selection, over-fire draft provided by the stoker manufacturer.

(c) All stoker-fired installations serving steam boilers below 15 lbs. /in.<sup>2</sup> or hot water boilers below 30 lbs. /in.<sup>2</sup> gauge boiler pressure shall include provision for adequate hold-fire controls.

(d) On all stoker-fired installations, provision shall be made for over-fire, secondary air.

(e) All stoker-fired installations having a feed greater than 400 lbs./hour shall be equipped with a smoke indicator or smoke alarm.

(f) All stoker-fired installations having a feed greater than 400 lb./hour shall be equipped with a fuel-air combustion control system.

(g) Where a pneumatic ash-handling system is installed, provision shall be made to vent this system to the atmosphere through adequate collection devices.

(h) Chimneys serving solid fuel-fired installations shall conform in size and height to the recommendations of the boiler, furnace or burner manufacturer.

(i) The products of combustion from all solid fuel-fired installations shall be discharged to the atmosphere at such heights and in such manner as to prevent nuisances being created to neighboring occupancies.

(k) All boiler or furnace rooms serving solid fuel-fired installations shall be provided with an outside air intake for combustion air that conforms with Wisconsin Administrative Code section Ind 59.60.

**REGULATIONS III - INTERNAL COMBUSTION ENGINES****RULE 1 - Immediate Correction**

When in the opinion of the Director an air pollution control ordinance violation caused by internal combustion engine equipment requires immediate correction, the person liable for the equipment shall be notified promptly to expedite the appropriate maintenance and repair.

**RULE 2 — Public Transportation Terminus Points**

Whenever any public transportation automotive power equipment lays over at a terminus point for greater than five (5) minutes, the engine shall be turned off. This rule shall apply when outside air temperatures do not fall below twenty degrees Fahrenheit (20°F) above zero unless the equipment is disabled and it is necessary to continue operation.

**REGULATION IV -- SAMPLING AND TESTING****RULE 1 — Authorization**

The Director is hereby authorized to conduct, or cause to be conducted, any test or tests of any new or existing process equipment the operation of which, in his opinion, can be expected to result in emissions in excess of the limitations in the Milwaukee County Air Pollution Control Ordinance, or when, in his judgment, there is evidence that any such process equipment is exceeding any emission limitation prescribed in said ordinance. Upon notification by the Director that performance emission tests are considered necessary, a person may elect to conduct such tests himself. In this event, the person shall notify the Director of this decision and of the time and date of such testing. The Director, or his representative, may witness such testing. All tests so conducted shall be in a manner acceptable to the Director and a complete detailed test report of such tests shall be submitted to the Director.

**RULE 2 — Departmental Tests**

Nothing in these Rules and Regulations concerning tests conducted by and paid for by any person or his authorized agent shall be deemed to abridge the rights of the Director or his representatives to conduct separate or additional tests of any process equipment on behalf of Milwaukee County Department of Air Pollution Control at a time which is mutually agreeable and at the Department's expense, except as in Rule 3 of this Regulation below.

**RULE 3 — Test Openings, Scaffolding and Facilities**

When tests of existing process equipment are deemed necessary by the Director and the person does not elect to conduct such tests himself, he shall at his expense provide test openings, access scaffolding and other pertinent facilities as requested by the Director. If he refuses to supply the requested test openings, access scaffolding and other pertinent facilities, the Director shall notify such person to show cause before the Director on a day certain, not less than ten nor more than twenty days from the day of notice, why the equipment shall not be sealed. The results of all tests conducted by the Director

shall be furnished to the owner or operator of the process equipment. If the test results establish that the effluents from the process equipment meet the emission limitations of the Milwaukee County Air Pollution Control Ordinance, the Department shall assume the costs for the installation of the test openings, access scaffolding and other pertinent facilities.

*(Rules and Regulations adopted July 21, 1964 J. Proc., p. 1135-1139; published Aug. 13, 1964, effective 30 days after publication)*



**REGULATION V – NEW, ALTERED AND RECONSTRUCTED  
INCINERATOR INSTALLATIONS****RULE 1 – Applicability**

All new, altered and reconstructed incinerator installations for which a fee is provided in Section 89.10 shall be governed by these Rules and Regulations. These Rules and Regulations with regard to incinerator installations shall be effective thirty days after passage and publication in the official newspaper of Milwaukee County.

**RULE 2 – Definitions and Nomenclature**

The definitions, nomenclature, classification of wastes and classification of incinerators as proposed and adopted by the Air Pollution Control Association (APCA) Incinerator Committee is hereby adopted and made part of these Rules and Regulations. The nomenclature, definitions and classification of wastes and of incinerators used in these Rules and Regulations and in all communications with the Department of Air Pollution Control relative to incinerators shall conform to this APCA Incinerator Committee's recommended practices.

**RULE 3 – Must Meet Performance Emission Requirements**

Nothing in these Rules and Regulations will absolve the owner or operator of any incinerator from meeting all of the air pollution performance emission requirements contained in Section 89.11 of the Milwaukee County Air Pollution Control Ordinance. The granting of an Installation Permit, Operating Permit or a Certificate of Operation shall not provide immunity from compliance with, or prosecution for violations of, the provisions of said Ordinance and these Rules and Regulations.

The incinerator supplier shall be solely responsible for the design of all incinerators to insure that any incinerator installed within Milwaukee County is capable of complying with the performance emission requirements of Section 89.11 of the Milwaukee County Air Pollution Control Ordinance when operated in accordance with the manufacturer's instructions at rated burning capacity with all types of wastes which are normal to the owner.

**RULE 4 – Incinerator Installations**

(a) Air for combustion and ventilation of rooms in which incinerators are located shall be adequate to provide for complete combustion of the refuse, in addition to all other air requirements, at rated burning capacity. All rooms serving incinerator installations shall be provided with an outside air intake for combustion air that conforms with

**Wisconsin Administrative Code Section Ind 59.60.**

(b) All new, reconstructed and altered incinerator installations having a primary furnace volume greater than 5 cubic feet shall be provided with their own separate high temperature flue of adequate cross-section and height to provide ample draft for capacity operation of the incinerator. No other combustion devices shall be connected to an incinerator flue, except where adequate draft and cross-section exists to insure emission performance of both the incinerator and the other combustion devices within the emission limitations of the Milwaukee County Air Pollution Control Ordinance.

(c) All incinerators shall be equipped with adequate automatic draft regulation.

(d) The products of combustion from all incinerator installations shall be discharged to the atmosphere at such heights and in such manner as to prevent nuisances being created to neighboring occupancies.

(e) When the design of a proposed incinerator installation is such that there is little or no basis to predict the air pollution emission performance of the incinerator, the Director will require that performance emission test data and reports by an approved laboratory or testing group be submitted by the supplier to support any claim that the incinerator will meet the Milwaukee County Air Pollution Control Ordinance performance emission requirements prior to issuance of an Installation Permit. Such supporting tests and report shall be in detail and shall describe the nature of the wastes consumed, the rate of incinerator operation, the frequency of charges, draft and temperature conditions, a description of the test procedures and sampling system, and detailed quantitative and qualitative data and results on the visual, particulate and fume emissions of the unit, plus any other information the Director may request. A listing of those laboratories or test groups who by virtue of equipment, skills and experience are acceptable to the Director shall be maintained in the office of the Department of Air Pollution Control.

When the supplier is unable to supply such data as the Director requires, an Installation Permit and an Operating Permit will be issued only on an experimental basis and the Department shall so notify the owner or operator prior to issuance of the Installation Permit. For all experimental installations, the supplier shall be required to conduct, or have conducted, air pollution performance tests concurrently with capacity burning tests to demonstrate that the incinerator installation is capable of complying with the emission limitations of the Milwaukee County Air Pollution Control Ordinance. The Testing organization shall be one of those laboratories or test groups that have established their qualifications with the Director.

Or, upon written request, as provided by Section 89.10 (2) Fees, the Director is authorized to conduct quantitative and qualitative emission tests using qualified Departmental personnel.

When the emission tests conducted under the Operating Permit fail to show that the incinerator is capable of operation within the emission limitations of the Milwaukee County Air Pollution Control Ordinance, no Certificate of Operation will be issued for this installation and the Director shall issue an order to seal the incinerator from future operation until, after modifications, it can be demonstrated to the Director that the modified incinerator has the capability to operate lawfully under the Milwaukee County Air Pollution Control Ordinance.

(f) Flue-fed incinerators utilizing combined refuse chute and flue shall be prohibited unless equipped with combustion control devices and air pollution control equipment acceptable to the Director. In all flue-fed incinerator installations, performance demonstration tests conducted at the expense of the supplier shall be required under the Operating Permit. Where such tests fail to demonstrate compliance with the emission requirements of the Milwaukee County Air Pollution Control Ordinance, a Certificate of Operation will not be issued and an order to seal this installation shall be issued by the Director until, after modifications, it can be demonstrated to the Director that the modified incinerator has the capability to operate lawfully under the Milwaukee County Air Pollution Control Ordinance.

(g) Refuse burners not connected to a chimney, flue or stack shall be prohibited. No chimney or stack base shall be used as a refuse burner. Refuse burners shall be considered incinerators for purposes of these Rules and Regulations.

(h) Only approved domestic incinerators shall be installed. An approved domestic incinerator is one which has been tested by an acceptable and recognized national laboratory or test group and certified as conforming to the emission limitations of the latest Approval Requirements for Domestic Gas-Fired Incinerators of the American Standards Association.

(i) Whenever an incinerator is found to be in a state of disrepair such that it cannot be operated within the performance emission requirements, the owner or operator shall be so notified. If after 30 days the obvious defects in the incinerator have not been remedied, the Director shall order the incinerator to be sealed. Any person who shall break a seal or who shall use an incinerator sealed by order of the Director shall be in violation of Section 89.11 (10), and upon conviction thereof, shall be subject to the penalties provided in Section 89.14 of the Milwaukee County Air Pollution Control Ordinance.

(j) An order of the Director to seal an incinerator under provisions

of this Regulation is subject to appeal in accordance with provisions of Section 89.17 of the Milwaukee County Air Pollution Control Ordinance.

*(Rules and Regulations adopted June 16, 1965 J. Proc., p. 1171-1176; published July 1, 1965, effective August 1, 1965)*

Mr. JARMAN. The committee will accept in the record letters from the U.S. Conference of Mayors and from the National Coal Association.

(The letters referred to follow :)

U.S. CONFERENCE OF MAYORS,  
Washington, D.C., September 27, 1966.

HON. HARLEY O. STAGGERS  
*Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives,  
Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The United States Conference of Mayors supports the provisions of H.R. 13199, a bill to amend the Clean Air Act.

Air pollution in our urban areas continues to be a serious threat to community health and welfare. The many factors contributing to the air pollution problem are increasing, and the challenge facing our control agencies is becoming more critical each day.

The United States Conference of Mayors believes that the provisions of the Clean Air Act are designed to assist the cities of this nation in carrying out the front-line responsibility for the control of air pollution. Since the passage of the act, many cities have received financial and technical assistance under the program. Many others have submitted requests for financial assistance and are presently awaiting the availability of additional Federal funds.

This assistance has provided a real stimulus to the initiation and improvement of local control programs. However, the short-term financial assistance now provided by the Clean Air Act does not satisfy the need for the continuing, longer-range effort required for the prevention and abatement of growing air pollution problems. We believe that the provision of grant support for the maintenance of effective control programs, as contained in H.R. 13199, will contribute directly to the effort needed now and in the future.

The United States Conference of Mayors believes, however, that the provision contained in the third sentence of subsection (b) of Section 104 of the Clean Air Act, should not apply to maintenance grants authorized by H.R. 13199. This provision, a narrow maintenance of effort concept, while logical in relation to the existing short-term stimulatory grant program, should not be applied to grants in support of long-range control programs. Over a period of years, control program costs may fluctuate, due to non-recurring costs, without substantially affecting overall program effectiveness. Within the matching requirements prescribed in H.R. 13199, we believe that this grant authority should be flexible enough to allow Federal supplementary financial assistance for the maintenance of the level of effort required for an effective control program regardless of the availability of local matching funds.

We strongly support, too, the provision of H.R. 13199 that would delete that portion of Section 104(a) of the Clean Air Act which limits the total of grants for support of control programs to 20 percent of the total appropriation for any year. In order to control air pollution, it is essential that greater emphasis be placed upon the application of current technology. Larger amounts of grant funds will be needed to assist control agencies in this regard, and the removal of the 20 percent limitation would provide budgetary flexibility in meeting this need.

Sincerely yours,

JOHN J. GUNTHER,  
*Executive Director.*

NATIONAL COAL ASSOCIATION,  
Washington, D.C., September 27, 1966.

HON. JOHN JARMAN,  
*Chairman, Subcommittee on Public Health and Welfare, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: It is our pleasure to comment on S. 3112 and H.R. 13199, which are the subject of a public hearing today by the Subcommittee on Public Health and Welfare.

We believe that this legislation would be strengthened by the adoption of H.R. 15481 which would amend Section 107 of the Clean Air Act to allow public hearings on any changes proposed in air pollution standards for Federal installations.

As you are aware, on June 2, pursuant to Section 5 of Executive Order No. 11262, the Secretary of Health, Education and Welfare published in the Federal Register performance standards for the prevention, control and abatement of air pollution from Federal facilities and buildings. They became effective thirty days later.

While Executive Order 11262 requires publication in the Federal Register of any modification or changes in the standards before they become effective, there is no provision made for a public hearing on such changes. H.R. 15481 would correct this situation by allowing any person affected by the proposed changes to make a request, within ninety days of their publication, for a public hearing.

This would be a constructive move. While the Secretary will maintain complete responsibility for the promulgation of any Federal air pollution standard, there may be times when the full impact of proposed standards may not be understood unless there is an opportunity for affected parties to be heard. The time to resolve the problems which can result from this lack of understanding is prior to the effective date of the standard, not after!

Indeed, without the benefit of a public forum at which all facets of a problem can be considered, there is real danger that an action program may be based on erroneous assumptions. That is why we believe it of utmost importance to provide for public hearings on any proposed change in the existing standards governing air pollution from Federal facilities.

We would also like to see the sense of H.R. 15481 applied to any air pollution control criteria for which the Secretary of HEW is responsible under Section 103(c)(2) of the Clean Air Act. While these criteria are required to reflect the "latest scientific knowledge" the present law in essence says that they require only the latest scientific knowledge of the Secretary of HEW. We do not believe that the true state of any art, or that any scientific knowledge, can be complete without the full and free opportunity for all interested parties to participate in a discussion of what is knowledge and what may be false assumption.

While it may be argued that criteria are not the same as standards, in this case they come very close to being standards. In effect, the Secretary of HEW controls the purse strings of many air pollution control agencies in that he may make grants to such agencies upon his terms and conditions. The net effect must certainly be that state air pollution control agencies will consider any criteria advanced by the Secretary of HEW as a minimum and act accordingly. Nowhere along the line is there any provision at present that calls for a public forum at which all opinions on proposed criteria, or a change in criteria, can be heard. We do not believe that such is the intent of Congress, and urge that any legislation to amend the Clean Air Act include language to correct this situation.

Sincerely,

STEPHEN F. DUNN,  
President.

Mr. JARMAN. This concludes our hearings and the committee stands adjourned.

(The following material was submitted for the record:)

STATEMENT SUBMITTED BY ALEX RADIN, GENERAL MANAGER, AMERICAN PUBLIC POWER ASSOCIATION

The motor vehicle commonly is described as a major source of air pollution. A report by the Department of Health, Education and Welfare, published last November, estimated that about half of the total air pollution problem in the United States is caused by cars, trucks and buses. A report published in June in St. Louis, Mo., indicated that 63% of the hydrocarbons discharged into the atmosphere in that city during a 1963 test period were attributed to automobiles.

Efforts are being made to control the exhausting of hydrocarbons and carbon monoxide by vehicles, but even the best of these provide something less than 100% control. For example, 1966 auto models for sale in California, where a stringent exhaust control law is in effect, are equipped with exhaust control systems that reduce hydrocarbon emissions by about 65% and carbon monoxide emissions by about 50%, according to the HEW report.

A PERMANENT SOLUTION POSSIBLE

On this basis, even the adoption of California-type legislation by all of the other states would not solve the vehicular pollution problem; it would merely permit a doubling of the number of automotive vehicles without any increase in

the present level of pollution, admittedly too high. Population projections indicate that a doubling of the number of vehicles can be anticipated within a relatively few years, and automotive pollution will rise accordingly.

Members of the American Public Power Association are deeply interested in what appears to offer a solution to a major part of the automotive pollution problem—the electric battery-powered vehicle. Although it is not likely that battery-powered automobiles would completely replace combustion-powered vehicles, the air pollution problem would be materially alleviated by the widespread use of battery-powered automobiles and trucks.

Development of new types of batteries which are lighter in weight and more long-lasting than earlier types has stimulated much interest in the battery-operated vehicle. Our Association has established a new committee to promote the electric auto. Battery-powered fork-lift vehicles, golf carts, delivery trucks and other specialized vehicles are beginning to catch on, particularly in Great Britain.

The early development of the automobile proceeded along three principal routes—the gasoline-powered engine, the steam engine, and battery-driven electric vehicle. Some of the early manufacturers switched from one type to the other; all types had certain advantages.

#### SIMPLICITY AND RELIABILITY NOTED

A description of the battery-powered automobile of the turn of the century indicates that it had reached an enviable position. "Evolution of the American Automobile" by Daniel D. Gage and Anne C. Garrison in *Business Topics*, published by Michigan State University, Autumn, 1965 notes that:

"It was the ultimate in simplicity and reliability, starting immediately with the turn of a switch, moving silently, increasing speed with utmost smoothness. Anyone could learn to drive it with finesse in five minutes. Consequently, it became identified with lady drivers and older people who were not concerned with dash and dreams of glory. Like its upholstery, its public image was dove gray. Its top speed did not exceed 25 miles an hour, and its range was limited by the need for recharging the storage batteries every 60 miles, either at a public garage or by means of expensive home equipment. As a passenger car, the electric car held on until the first World War, but the electric truck for street or in-factory use was revived 25 years later."

The same article notes that after the gasoline internal combustion power plant won out over steam and electricity, "for over half a century engineering ingenuity has been devoted to improving the piston engine, which is basically an over-elaborate and unsatisfactory source of power. It may have been that the challenge of perfecting this imperfect machine attracted designing talent to it rather than to the steam or electric car."

#### RESEARCH EFFORT NEEDED

Whatever its merits as a source of automotive propulsion, the gasoline engine is choking our civilization with its fumes. While continuing to perfect this "over-elaborate and unsatisfactory source of power" to diminish its contribution to our air pollution, it would be desirable, also, to devote engineering talent to the battery-driven vehicle, which appears to have many uses in our urbanized society today.

A study by the Cornell Aeronautical Laboratory, Inc., at Buffalo, N.Y., last year, made for the Commerce Department, suggested the desirability of two distinct types of vehicles, one for urban use and one for interurban highway travel. The Cornell group predicted that a major market for electric automobiles, primarily for urban use, will appear by 1980, pointing out that the electrically powered car creates no air pollution and, perhaps more persuasive to potential buyers, has operating costs which are considerably less than those with internal combustion engines for stop-and-go driving.

Just recently, an interesting suggestion was made by columnist Howard K. Smith in the June, 1966, issue of *Washingtonian* magazine. Declaring that there are dozens of things which we can do about city traffic "when the moment of total paralysis and the incidence of lung and throat ailments finally prove that something must be done."

One of these could be to provide inner city drivers with a fleet of drive-yourself electric, two-seater carts, which could be driven for a mile, at a speed of 20 miles per hour, for each coin put in a slot. "There would be no fumes,

no important accidents, and no traffic jams caused by a mere 40 or 50 people scattered one-apiece in limousines big enough for eight."

#### CADILLACS VERSUS HORSES

It is certainly true, as Mr. Smith says in the same column, that there are few inner cities today where distances were not covered faster half a century ago in horse-drawn vehicles than they are today in Cadillacs.

So one arm of the research effort into the electric vehicle can be directed toward designing, specifically for urban use, a vehicle which can transport people from place to place at relatively low speed, with ease of stopping and starting in dense traffic. The design of the vehicle itself requires an investment of talent and imagination.

Since there remain a good number of one-car families in America, and since the automobile represents both a convenience and a pleasure vehicle, a great deal of work must be done to increase the speed at which a battery-driven auto can travel, and to increase the distance which can be traveled without recharging the batteries.

A recent article by Edmund K. Faltermayer, appearing in the November, 1965 issue of *Fortune* magazine, reported that Yardney Electric Corp. of New York City has fitted up a special Renault Dauphine with lightweight batteries that can propel it at speeds up to 55 miles an hour, and up to 80 miles on a charge. "The catch is that these are military-type silver-zinc batteries costing \$3,000." Nevertheless, Mr. Faltermayer added, several companies, including Yardney and General Dynamics Corp. are pushing ahead in the search for batteries that would cost only a fraction of this.

Mr. Faltermayer concludes that while a battery-operated car suitable for long journeys is a long way off, a smaller version might be available in a few years. Perhaps he was overly pessimistic, in view of progress which could be made if an all-out research effort were launched to develop smaller, lighter, and more powerful batteries. The fuel cell may offer an even more promising field for further research.

#### FUEL CELLS HOLD PROMISE

William T. Reid, of Battelle Memorial Institute, who is serving as coordinator of a broad research program on fuel cells, declared in a recent article that the greatest promise in providing electrical power for an automobile comes from the fuel cell. Although fuel cells are not being used commercially, Mr. Reid reported that they are being used experimentally for powering fork-lift trucks, golf carts, and the like.

From the standpoint of electric utilities, Mr. Reid noted that the hydrogen-oxygen fuel cell, which presently has reached the highest level of development of any type of fuel cell, would run on the products of electrolyzed water, thus opening up the possibility of an electrolyzer in each home garage, or in service stations in residential areas.

Batteries presently available cannot be used effectively in automobiles because they are too heavy and too costly, Mr. Reid said in the same article. But he suggested that improvements can be attained in lead-acid batteries—improvements which battery manufacturers have not been forced to make in the past because their present product meets the requirements of the present market. "Here is one area where research might make a major contribution," Mr. Reid declared. "Another would be research and development leading to a wholly new secondary battery based on one of the light metals such as lithium, sodium, magnesium, or calcium with a nonaqueous electrolyte." He added that this would be no easy task but, if successful, it would pay great dividends for other electrical storage systems as well as for electric automobiles.

Mr. Reid's article concluded that regenerative braking, traction motors specially designed for automobiles, controls, and auxiliaries all will need considerable development. In each of these areas, research could be justified leading to a final, practical prototype of an electric automobile.

#### NEW BATTERIES DEVELOPED

Within the past year, two new types of electric storage batteries have been announced. In December, 1965, the Edison Electric Institute and General Dynamics announced a prototype zinc-air battery expected to be ready for testing soon. In February of this year Gulton Industries, Inc., announced the successful



demonstration of a lithium battery that will be subjected to further development work. During the past decade, the traditional lead-acid battery found in every automobile and the industrial nickel-iron battery developed by Edison have been joined by the nickel-cadmium, nickel-silver, silver-zinc, silver-cadmium and mercury batteries. Developmental work also is going forward on sodium batteries.

An article on developments in electrochemical energy-conversion devices, batteries and fuel cells, by Dr. M. Barak of Chloride Technical Services Ltd., Swinton, Manchester, England, summarized recent progress in England, where battery powered delivery trucks are extensively used, and where passenger vehicles are being designed for battery operation.

Dr. Barak concludes that development work must continue in the direction of lightweight fuel cells with higher outputs, lightweight traction motors, and possibly high-speed transmission before fuel-battery electric cars can become a practical reality.

He reported that over 100,000 electrically propelled vehicles are in operation in Great Britain, including industrial trucks used to transport materials and products in factories, commercial vehicles, mining locomotives, and so on.

#### A MILLION ELECTRIC CARS PREDICTED

The Electricity Council in Britain more recently predicted that within 10 years a million battery-driven automobiles will be in operation. There are four small electric cars being tested on London streets as a result of the Council's campaign to promote the electric vehicle—two British Motor Corporation "Mini" cars, with the gasoline engine replaced by batteries and an electric motor, and two which are specially designed for electric operation by Scottish Aviation and Peel Engineering, according to a dispatch from London which appeared recently in the *Chicago Tribune*.

The Scottish Aviation model, called the Scamp, and the Peel car, called the Trident, are expected to cost less than \$1,000 when mass-produced. They can go only about 30 miles between recharging, at a top speed of about 40 miles an hour. Batteries weigh about 700 pounds in the two-passenger models.

The Electricity Council predicted that eventually parking meters will be wired to recharge batteries, although recharging would be done in garage sockets during night, using off-peak electric rates, in most cases.

It seems highly important to pursue the design of vehicles specifically for battery operation, as the British are doing. This approach may result in vehicles which are most suitable for specific uses, e.g., commuter travel to and from large cities, as well as in vehicles which make the most efficient use of battery power. Obviously the breakthrough to wide-scale use of electric vehicles will not come as a result only of fitting up standard model cars for battery operation. And a real breakthrough in terms of consumer acceptance must come if the battery-operate vehicle is to have an impact on the air pollution problem.

#### FEDERAL FUNDS FOR BATTERY RESEARCH

There are about 15 Federal agencies funding a total of 86 projects in battery research. Of these, 21 are being performed in government laboratories, 14 are being performed by 10 universities, and 51 by 24 industrial companies. Manufacturing corporations also are conducting research.

The Tennessee Valley Authority purchased a battery-operated electric car in 1961 for study and evaluation of the possible electric utility load buildup that could occur from public acceptance of such a vehicle. The car is a Renault Dauphine, with electric motor and batteries substituted for the gasoline engine.

After a series of tests on the car, which is called the Henney Kilowatt, it was concluded that commercial feasibility of the electric car "must await a substantial improvement in performance capability, particularly in the capacity to travel longer distances." A need for "major advances in storage battery technology" was noted in TVA's report on the Henney Kilowatt, but it was pointed out that research being carried out in connection with the national space program could make such advances possible.

In 1961, the Lead Industries Association of New York launched a campaign to increase the use of storage batteries as a source of electric power for industrial trucks, personnel carriers and other vehicles. The Association estimated that the electricity consumption of a single electric industrial truck would be 7,500 kilo-

watt hours per year, or more than five times as much as is used by a window air-conditioner. This gives an indication of the importance of the electric vehicle to an operating utility, particularly when we consider that the bulk of the re-charging load would come during the night, when other loads would be very low. Several electric utilities have launched sales promotion campaigns to sell electric trucks, according to an article in the Aug. 23, 1965 issue of *Electrical World* magazine.

#### R. & D. SUPPORT REQUIRED

A leading proponent of electric autos to combat air pollution has been the Electric Storage Battery Company. The president of this firm, M. G. Smith, has called upon the President to "make recommendations for research and development of all kinds of non-polluting devices and spell out what both the Federal government and private industry should do to get those devices built and used—universally and in the least possible time."

Mr. Smith declared that non-polluting, battery-powered vehicles for low-speed, low-mileage urban transportation are feasible right now.

This brief summary of developments is not intended to be comprehensive, but merely to indicate that there is widespread interest in the electric vehicle and a recognition that it can substantially reduce the air pollution problem, if it is used as an alternative to the gasoline-powered car in urban areas.

Widespread use of electric vehicles would require increased generation of electric power in order to re-charge the batteries of electric vehicles. In this connection, the question of air pollution from electric generating plants will be raised, and should be raised, in assessing the total impact of the use of electric vehicles on the pollution problem.

Unlike gasoline burning automobile engines, modern electric generating stations do not produce carbon monoxide, and the gas from stations is discharged into the upper atmosphere, not at street level where it directly contaminates the air people breathe. Furthermore, utilities now have very sophisticated equipment for controlling pollution.

In general, it would seem easier to regulate the discharge from a few hundred large generating plants than from millions of automobiles. The trend toward construction of larger plants, in more remote locations, will facilitate the regulation of generating plant pollution. Increasing use of nuclear fuel also will reduce the potential pollution from generating plants.

The members of our Association are fully aware of the pollution problem, as it is affected by the burning of fuels to produce electricity, and I am confident that they will cooperate in any reasonable plan to reduce or eliminate such pollution.

In addition to establishing a special committee to promote greater research which will lead to a "breakthrough" in mass markets and mass production of electric automobiles, our Association, at its annual Conference in Boston earlier this year adopted the following resolution by unanimous vote on May 12, 1966:

#### "ELECTRIC VEHICLES

"Whereas battery-powered passenger and other vehicles offer an alternative to vehicles powered by combustion engines, which create severe air pollution problems; and

"Whereas research currently under way indicates that economically feasible battery-powered vehicles can be developed within the near future if the electric industry and manufacturers push forward with an aggressive program of research and development; and

"Whereas the electric vehicle promises to provide an excellent off-peak load for electric utilities: Now, therefore, be it

"Resolved, That the American Public Power Association urges a large-scale research and development effort to bring the electric vehicle to the market."

APPA hopes that your Committee, in attacking the most pervasive source of air pollution, will recommend the kind of large-scale research and development effort necessary to make available a pollution-free means of transportation for our urban areas.

Our Association urges the committee's support for a two-pronged research and development effort. Such an effort would include both design of new vehicles suited for battery operation and development of lighter, longer-lasting, and less expensive batteries which can power the vehicles of the future.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF HEALTH,  
Harrisburg, Pa., August 18, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, House Committee on Interstate and Foreign Commerce, Rayburn  
House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: I have been informed that your Committee will soon hold hearings on H.R. 13199. The proposed amendments to the "Clean Air Act", provided for in this bill, can have a significant effect on governmental air pollution control efforts throughout the Nation. At a recent meeting of the American Industrial Hygiene Association, the Director of the Pennsylvania Department of Health's Division of Air Pollution Control made the following comments with respect to this proposed legislation.

"A bill introduced at this Session of Congress (H.R. 13199, introduced by Mr. Staggers on March 2, 1966) would permit grants to state and municipal agencies 'up to one-half of the cost of maintaining programs for the prevention and control of air pollution.' The enactment of this bill would alleviate some of the inequities of the present grant program. It would be important, though, that the Public Health Service regulations, developed for awarding grants for maintaining programs, not interfere with the autonomy of these programs. 'Maintenance grants' should not be awarded on a 'project' basis. The individual development of state and municipal programs should not be inhibited by regulations which would have the Federal Government specify how these programs should be operated.

"'Maintenance grants' should be awarded on a 'formula' basis. The amount of Federal support to be given to a state or municipal program should be based upon the judicious application of criteria which are related to the extent and nature of the air pollution problems under the jurisdiction of the grantee agency.

"At the present time air pollution control concepts, both technical and administrative, are rapidly changing. It is a time to 'let a hundred flowers bloom'. No single agency has sufficient ability or knowledge to prescribe the administrative techniques which should be used by various state and local air pollution agencies in controlling the many and varied problems they face."

The Pennsylvania Air Pollution Control Act of 1960 authorized the creation of one of the first state level programs in the Nation. This program is administered by the Pennsylvania Department of Health. The Department first became involved in air pollution control in 1949 when this activity was established in our Division of Occupational Health. After the passage of the 1960 Act, a Division of Air Pollution Control was created in the Department. During our relatively long experience in this activity we have worked closely with the Federal program and other state and local programs. It has been our experience and it is our firm belief that, to be effective, governmental air pollution control programs must be operated by an agency which is not physically, politically or socially distant from day-to-day contacts with local air pollution problems. We believe that the Federal Government should develop broad National goals and a program of technical support. It is also important that Federal activities insure that—

(1) The importance and effectiveness of local control programs is recognized.

(2) Real support is given to encourage the development of local programs.

(3) The ability of local officials to operate a program to the full extent of their competence, resources and local needs and desires, is not interfered with.

The program grant provisions of the "Clean Air Act" were designed to provide real support to local and state agencies. The implementation of these provisions has had a significant effect on the development and expansion of local and state efforts. We believe, though, that the regulations developed by the Public Health Service for the administration of this program were, in some areas, unfair and to a degree interfered with local autonomy. Specifically we object to the provisions of the regulations which require "new money" to match Federal funds and the awarding of grants on a "project basis".

As indicated in the above statement, the "maintenance grants" provisions of H.R. 13199 "would alleviate some of the inequities of the present grant program". To insure that the administration of the maintenance grant program is carried out on an equitable basis, we believe that it should be clearly stated that the



74-128/4:87-47

# FEDERAL AIRPORT ACT EXTENSION

---

---

HEARING  
BEFORE THE  
COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES  
EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

**H.R. 13665, S. 3096**

BILLS TO AMEND THE FEDERAL AIRPORT ACT TO EXTEND  
THE TIME FOR MAKING GRANTS THEREUNDER,  
AND FOR OTHER PURPOSES

---

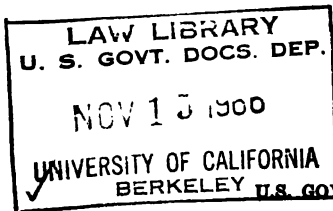
SEPTEMBER 28, 1966

---

**Serial No. 89-49**

---

Printed for the use of the  
Committee on Interstate and Foreign Commerce



69-401

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1966

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE**

**HARLEY O. STAGGERS, West Virginia, Chairman**

**WALTER ROGERS, Texas**  
**SAMUEL N. FRIEDEL, Maryland**  
**TORBERT H. MACDONALD, Massachusetts**  
**JOHN JARMAN, Oklahoma**  
**LEO W. O'BRIEN, New York**  
**JOHN E. MOSS, California**  
**JOHN D. DINGELL, Michigan**  
**PAUL G. ROGERS, Florida**  
**HORACE R. KORNEGAY, North Carolina**  
**LIONEL VAN DEERLIN, California**  
**J. J. PICKLE, Texas**  
**FRED B. ROONEY, Pennsylvania**  
**JOHN M. MURPHY, New York**  
**DAVID E. SATTERFIELD III, Virginia**  
**DANIEL J. RONAN, Illinois**  
**J. OLIVA HUOT, New Hampshire**  
**JAMES A. MACKAY, Georgia**  
**JOHN J. GILLIGAN, Ohio**  
**CHARLES P. FARNSLEY, Kentucky**  
**JOHN BELL WILLIAMS, Mississippi**  
**BROCK ADAMS, Washington**

**WILLIAM L. SPRINGER, Illinois**  
**J. ARTHUR YOUNGER, California**  
**SAMUEL L. DEVINE, Ohio**  
**ANCHER NELSEN, Minnesota**  
**HASTINGS KEITH, Massachusetts**  
**WILLARD S. CURTIN, Pennsylvania**  
**GLENN CUNNINGHAM, Nebraska**  
**JAMES T. BROTHILL, North Carolina**  
**JAMES HARVEY, Michigan**  
**ALBERT W. WATSON, South Carolina**  
**TIM LEE CARTER, Kentucky**

**W. E. WILLIAMSON, Clerk**

**KENNETH J. PAINTER, Assistant Clerk**

**Professional Staff**

**ANDREW STEVENSON**  
**KURT BORCHARDT**

**JAMES M. MENGER, Jr.**  
**WILLIAM J. DIXON**

# CONTENTS

Text of—	Page
H.R. 13665.....	1
S. 3096.....	2
<b>Report of—</b>	
Air Force Department.....	4
Bureau of the Budget.....	3
Civil Aeronautics Board.....	3
Commerce Department.....	5
Interior Department.....	4
<b>Statement of—</b>	
Bowers, Chester G., Deputy Director, Airports Service Federal Aviation Agency.....	6
Burnard, E. Thomas, executive vice president, Airport Operators Council International.....	13
Goodrich, Nathaniel H., General Counsel, Federal Aviation Agency.....	6
Healy, Patrick, executive director, National League of Cities.....	46
Heldenfels, H. C., Heldenfels Bros., Associated General Contractors.....	35
Hoyt, F. Russell, executive director, American Association of Airport Executives.....	19
Kelly, Kent Rogers, associate executive director, National Aviation Trades Association.....	43
McKee, Gen. William F., Administrator, Federal Aviation Agency.....	6
McMullen, A. B., executive vice president, National Association of State Aviation Officials.....	52
Monroe, Robert, assistant director, Office of Policy Coordinative, Aircraft Owners & Pilots Association.....	37
Morrow, Cole H., Director, Airports Service, Federal Aviation Agency.....	6
Prentiss, Maj. Gen. Louis W., executive vice president, American Road Builders Association.....	59
Thomas, David D., Deputy Administrator, Federal Aviation Agency.....	6
<b>Additional information submitted for the record by—</b>	
Air Transport Association of America, statement of Clifton von Kann, vice president operations.....	71
Airport Operators Council, report of the national airport survey, 1966 through 1969.....	22
American Association of Airport Executives, report of the national airport survey, 1966 through 1969.....	22
Association of Commuter Airlines, letter from Merrill Armour, executive secretary.....	72
Association of Local Transport Airlines, statement of Joseph P. Adams, executive director and general counsel.....	63
National Association of State Aviation Officials, report of the national airport survey, 1966 through 1969.....	22
National League of Cities, statement of Sam Massell, Jr.....	47
National Pilots Association, statement of David H. Scott, executive vice president.....	62
United States Conference of Mayors, statement of Sam Massell, Jr.....	47





# FEDERAL AIRPORT ACT EXTENSION

WEDNESDAY, SEPTEMBER 28, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Today the Committee on Interstate and Foreign Commerce meets to hold hearings on H.R. 13665. This is a bill to extend the Federal Airport Act for 3 years under a total authorization of \$225 million. The Federal Airport Act dates back some 20 years and Federal grants-in-aid have been very important in the establishment and development of airports throughout the country.

I introduced H.R. 13665 to renew this program for another 3 years at the request of the administration. A similar bill, S. 3096, has passed the Senate and is also before this committee.

(H.R. 13665 and S. 3096 and agency reports follow :)

[H.R. 13665, 89th Cong., 2d sess.]

A BILL To amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 5(d) of the Federal Airport Act (49 U.S.C. 1104(d)) is amended by adding at the end thereof the following new paragraphs:

"(7) For the purpose of carrying out this Act in the several States, in addition to other amounts authorized by this Act, appropriations amounting in the aggregate to \$199,500,000 are hereby authorized to be made to the Administrator over a period of three fiscal years, beginning with the fiscal year ending June 30, 1968. Of amounts appropriated under this paragraph, \$66,500,000 shall become available for obligation, by the execution of grant agreements pursuant to section 12, beginning July 1 of each of the fiscal years ending June 30, 1968, June 30, 1969, and June 30, 1970, and shall continue to be so available until expended.

"(8) For the purpose of carrying out this Act in Hawaii, Puerto Rico, and the Virgin Islands, in addition to other amounts authorized by this Act, appropriations amounting in the aggregate to \$4,500,000 are hereby authorized to be made to the Administrator over a period of three fiscal years, beginning with the fiscal year ending June 30, 1968. Of amounts appropriated under this paragraph, \$1,500,000 shall become available for obligation, by the execution of grant agreements pursuant to section 12, beginning July 1 of each of the fiscal years ending June 30, 1968, June 30, 1969, and June 30, 1970, and shall continue to be so available until expended. Of each such amount, 40 per centum shall be available for Hawaii, 40 per centum shall be available for Puerto Rico, and 20 per centum shall be available for the Virgin Islands.

"(9) For the purpose of developing, in the several States, airports the primary purpose of which is to serve general aviation and to relieve congestion at airports having high density of traffic serving other segments of aviation, in addition

to other amounts authorized by this Act for such purpose, appropriations amounting in the aggregate to \$21,000,000 are hereby authorized to be made to the Administrator over a period of three fiscal years, beginning with the fiscal year ending June 30, 1968. Of amounts appropriated under this paragraph, \$7,000,000 shall become available for obligation, by the execution of grant agreements pursuant to section 12, beginning July 1 of each of the fiscal years ending June 30, 1968, June 30, 1969, and June 30, 1970, and shall continue to be so available until expended."

SEC. 2. (a) Section 6(a) of such Act (49 U.S.C. 1105 (a)) is amended by striking out "or 5(d)(4)" in the first sentence and inserting in lieu thereof "5(d)(4), or 5(d)(7)".

(b) Section 6(b)(1) of such Act (49 U.S.C. 1105(b)(1)) is amended by striking out "and 5(d)(4)" and inserting in lieu thereof "5(d)(4), and 5(d)(7)" and by striking out "and 5(d)(6)" and inserting in lieu thereof "5(d)(6), and 5(d)(9)".

[S. 3066, 89th Cong., 2d sess.]

AN ACT To amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5(d) of the Federal Airport Act (49 U.S.C. 1104(d)) is amended by adding at the end thereof the following new paragraphs:

"(7) For the purpose of carrying out this Act in the several States, in addition to other amounts authorized by this Act, appropriations amounting in the aggregate to \$190,500,000 are hereby authorized to be made to the Administrator over a period of three fiscal years, beginning with the fiscal year ending June 30, 1968. Of amounts appropriated under this paragraph, \$66,500,000 shall become available for obligation, by the execution of grant agreements pursuant to section 12, beginning July 1 of each of the fiscal years ending June 30, 1968, June 30, 1969, and June 30, 1970, and shall continue to be so available until expended.

"(8) For the purpose of carrying out this Act in Hawaii, Puerto Rico, and the Virgin Islands, in addition to other amounts authorized by this Act, appropriations amounting in the aggregate to \$4,500,000 are hereby authorized to be made to the Administrator over a period of three fiscal years, beginning with the fiscal year ending June 30, 1968. Of amounts appropriated under this paragraph, \$1,500,000 shall become available for obligation, by the execution of grant agreements pursuant to section 12, beginning July 1 of each of the fiscal years ending June 30, 1968, June 30, 1969, and June 30, 1970, and shall continue to be so available until expended. Of each such amount, 40 per centum shall be available for Hawaii, 40 per centum shall be available for Puerto Rico, and 20 per centum shall be available for the Virgin Islands.

"(9) For the purpose of developing in the several States, airports the primary purpose of which is to serve general aviation and to relieve congestion at airports having high density of traffic serving other segments of aviation, in addition to other amounts authorized by this Act for such purpose, appropriations amounting in the aggregate to \$21,000,000 are hereby authorized to be made to the Administrator over a period of three fiscal years, beginning with the fiscal year ending June 30, 1968. Of amounts appropriated under this paragraph, \$7,000,000 shall become available for obligation, by the execution of grant agreements pursuant to section 12, beginning July 1 of each of the fiscal years ending June 30, 1968, June 30, 1969, and June 30, 1970, and shall continue to be so available until expended."

SEC. 2. (a) Section 6(a) of such Act (49 U.S.C. 1105(a)) is amended by striking out "or 5(d)(4)" in the first sentence and inserting "5(d)(4) or 5(d)(7)".

(b) Section 6(b)(1) of such Act (49 U.S.C. 1105(b)(1)) is amended by striking out "and 5(d)(4)" and inserting in lieu thereof "5(d)(4) and 5(d)(7)" and by striking out "and 5(d)(6)" and inserting in lieu thereof "5(d)(6) and 5(d)(9)".

Passed the Senate June 20, 1966.

Attest:

EMERY L. FRAZIER, *Secretary*.

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., September 27, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Bureau of the Budget on H.R. 13665 and S. 3096, bills "To amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes."

The bills would extend the Federal Airport Act to permit grants-in-aid for airport development at a maximum authorized level of \$75 million for each of the Fiscal Years 1968, 1969 and 1970.

You are advised that enactment of this legislation would be consistent with the Administration's objectives.

Sincerely yours,

WILFRED H. ROMMEL,  
*Assistant Director for Legislative Reference.*

---

CIVIL AERONAUTICS BOARD,  
Washington, D.C., May 2, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your letter of March 21, 1966, requesting the views of the Board with respect to H.R. 13665, a bill "To amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes."

H.R. 13665, which was introduced at the request of the Federal Aviation Agency, would extend the appropriation authority under the Federal Airport Act, expiring on June 30, 1967, for an additional three years at the existing level of \$75 million per annum. Special funds of \$7 million a year for the development of general aviation airports and \$1.5 million a year for Hawaii, Puerto Rico and the Virgin Islands would be continued. No other substantive changes would be made in the Act.

The Board's interest in the legislation arises out of its general advisory function under the Federal Airport Act, and its responsibility for the promotion of air safety under the Federal Aviation Act of 1958.

It is the opinion of the Board that there is a continuing need for the improvement of airport facilities. Piston aircraft are being replaced by jets at many airports. In many instances, runways will have to be lengthened and other improvements and repairs will be required in order to accommodate the jets on a continuing basis. Expected increases in traffic and in air carrier fleets suggest further that improvements at so-called satellite airports may be required to adequately serve major metropolitan centers. Moreover, increased attention will have to be given to the installation of certain landing aids, such as in-runway lighting and distance markers as a factor in airport safety.

The Board believes that there is a need for continuation of the special fund for the development of general aviation airports. The greatest percentage increase in air traffic activity over the past ten years has occurred in the field of general aviation. This increased activity has diminished the ability of large hub airports to accept additional air carrier traffic. It is most important, therefore, that greater emphasis be placed on the development of additional airports to serve general aviation, and on the improvement of existing general aviation airports in the larger metropolitan areas. These airports should be equipped with facilities adequate for the needs of general aviation to the extent permitted by the Federal Airport Act in order that congestion at high-density airports may be relieved and the safety and efficiency of operation of these latter airports improved.

For these reasons, the Board recommends the enactment of H.R. 13665.

## FEDERAL AIRPORT ACT EXTENSION

The Board has been advised by the Bureau of the Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

For the Civil Aeronautics Board:

HAROLD R. SAMERSON, *Secretary.*

DEPARTMENT OF THE AIR FORCE,  
Washington, June 8, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 13665, 89th Congress, a bill to amend the Federal Airport Act to extend the time for making grants thereunder. The Department of the Air Force has been delegated the responsibility for expressing the views of the Department of Defense.

The bill would authorize extension of the time for making grants until June 30, 1970. It would amend the Federal Airport Act to authorize each year for three years federal expenditures of \$45,500,000 to the several States and \$1,500,000 to Hawaii, Puerto Rico, and the Virgin Islands for the development of civil airports, and an additional \$7,000,000 each year for development of airports to serve general aviation.

Civil airports play an important role in national defense. This fact was demonstrated during World War II when some 429 civil airports were turned over to the Army and Navy. Because civil airports occupy a close relationship to the defense of the Nation and could play an important role in the reconstitution of forces, the Department of Defense supports enactment of H.R. 13665.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

ROBERT H. CHARLES,  
*Assistant Secretary of the Air Force  
(Installations and Logistics).*

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., June 2, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

DEAR MR. STAGGERS: This is in response to your request for the views of this Department on H.R. 13665, a bill "To amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes."

We recommend enactment of the bill.

The bill adds three new paragraphs to section 5(d) of the Federal Airport Act (49 U.S.C. 1104(d)). Two of the paragraphs authorize appropriations for fiscal years 1968, 1969, and 1970 to carry out the provisions of the Federal Airport Act in the various States, Puerto Rico, and the Virgin Islands.

This Department has a special interest in the continuation of funds under section 5(d) of the Federal Airport Act for the Virgin Islands. This bill would continue the availability of funds for grants for airport development for the Virgin Islands through fiscal 1970. Airport development is vitally important to the development of the tourist economy of this possession of the United States.

We are also interested in the continuation of the appropriation of funds for the discretionary fund of the Administrator of the Federal Aviation Agency under section 6 of the Federal Airport Act. The Administrator may use these funds for approved projects sponsored by the United States in national parks and national recreation areas, national monuments, national forests, and special reservations for Government purposes.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRY R. ANDERSON,  
*Secretary of the Interior.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., June 7, 1966.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
U.S. House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 13665, a bill, "To amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes."

H.R. 13665 would extend the authorization of Federal matching grants for airport development pursuant to section 12 of the Federal Airport Act as amended for three years, expiring on June 30, 1970. It would continue the present annual authorization of appropriations, available for obligation under grant agreements at the beginning of each of the fiscal years ending June 30, 1968; June 30, 1969; and June 30, 1970, as follows: 1) \$66,500,000 covering airports in the fifty states and the District of Columbia; 2) \$1,500,000 covering airports in Hawaii and Puerto Rico (in the amount of \$600,000 each) and in the Virgin Islands (in the amount of \$300,000); and 3) \$7,000,000 covering general aviation airports in the fifty states and the District of Columbia. The effect of H.R. 13665 would be to continue the Federal Airport Act grant programs at the same annual funding levels as have existed since fiscal year 1962.

The airport development program which has resulted from the Federal Airport Act has been highly beneficial to the commerce of the United States. The dynamic growth of aviation technology and the air transportation industry make it imperative that this program be continued in order to insure that airport development will keep pace with developments in aviation generally and in air safety particularly. The Department of Commerce believes that the commerce of the United States will be greatly enhanced by the continuation of the Federal airport development programs.

The Department of Commerce favors enactment of H.R. 13665.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the Administration's program.

For your information, we are attaching a copy of a statement of Under Secretary Boyd concerning the desirability of enactment of legislation extending the Federal Airport Act. This statement was given before the Aviation Subcommittee of the Senate Committee on Commerce on May 3, 1966.

Sincerely,

ROBERT E. GILES,  
*General Counsel.*

The CHAIRMAN. As I understand it, the entire aviation community is in favor of a continuation of this program, and the bill before us is relatively simple. I do not think that it should be necessary to receive lengthy oral statements.

It is my hope that those of you who have prepared detailed statements will submit them for the record and just summarize your position on the legislation, if necessary, in very brief comments.

The reason I say this is that we go in session at 11 o'clock this morning. The clock is running out on this session of Congress and if it is held up we may not be able to get this done.

If there are any opponents of the bill I would like them to tell me so that we can hear them and they would be heard to whatever extent they wish to be heard.

But if not, and, as I understand it, everyone is in favor of the bill, we would like to hear from General McKee, and if any of the rest of you feel in the interest of expedience that you could put your statements in the record and briefly summarize them it would be appreciated by the committee, or if not, as you see fit.

The first witness this morning will be the Administrator of the Federal Aviation Agency, Gen. William F. McKee.

General, welcome to the committee once again and you may proceed.

**STATEMENT OF GEN. WILLIAM F. McKEE, ADMINISTRATOR, FEDERAL AVIATION AGENCY; ACCOMPANIED BY DAVID D. THOMAS, DEPUTY ADMINISTRATOR; NATHANIEL H. GOODRICH, GENERAL COUNSEL; COLE H. MORROW, DIRECTOR, AIRPORTS SERVICE; AND CHESTER G. BOWERS, DEPUTY DIRECTOR, AIRPORTS SERVICE**

General McKEE. Mr. Chairman and members of the committee, first I would like to say that I have with me this morning Mr. Thomas, the Deputy Administrator; Mr. Goodrich, our General Counsel; Director of Airports Service, Mr. Morrow, and his Deputy, Mr. Bowers.

I think to put this bill in perspective, Mr. Chairman, I would like to read my statement, which is quite brief, which I believe will lay the basis for action by your committee.

The CHAIRMAN. All right.

General McKEE. I appreciate this opportunity to testify in support of H.R. 13665, a bill to amend the Federal Airport Act in order to extend, for another 3 years, the authorization for appropriation of funds for the making of grants-in-aid for airport development.

The program of Federal aid for airports began in 1947. Through it, over 2,000 airports throughout the Nation have received Federal matching funds for airport developments. Each of these assisted airports is a part of a national system of airports linking the Nation's population centers.

The development of this national system has resulted in safer, more convenient, faster movement of goods and people throughout the Nation. By providing an airport system as a part of the national airspace system we are fostering the growth of air commerce to provide a valuable support to the national economy.

As the Congress foresaw when it first authorized the Federal-aid airport program, air commerce has grown rapidly. The indicators promise continued growth.

The number of domestic passengers carried on scheduled U.S. air carriers is expected to increase from about \$118 million in fiscal year 1967 to \$150 to \$160 million in fiscal year 1970, a one-third increase of today's traffic.

It is interesting to note that in 1947 only 12,822,000 passengers were carried by domestic U.S. air carriers.

The composition of the civil air fleet will continue to trend more to jet aircraft. On May 1, 1966, turbojet service was being provided to 112 civil airports. We estimate that by 1970 another 250 airports will be served by the civil scheduled jet fleet. The greatest immediate

increase will be in the two- and three-engine short and medium-range jets many of which are now being introduced into local carrier service.

The conversion to jets in the entire airline system will require expanded airport facilities, and this in turn will create a particular demand for airport development dollars. This demand is reflected in the number and amount of the requests we now have for aid under our program for fiscal year 1967. We have 735 requests for a total of \$274.5 million in contrast to 603 in 1966 and 570 in 1965.

The general aviation aircraft fleet is continuing to grow. By 1970 active general aviation aircraft are expected to number about 118,000, an increase of roughly 22 percent over today. Most of this increase will be in the multiengine and large single engine categories. And a significant share of the increase will be jet aircraft.

By 1970, landings and takeoffs at the 300 airports with FAA control towers are estimated to reach 53 million. This is an increase of 50 percent over operations during fiscal year 1965. This is exclusive of the approximately 9,000 airports that do not have FAA control towers.

There has been considerable discussion in the press over the summer of the problem of airport congestion. Basically, it has two facets: First, there is congestion in the airspace surrounding many of our airports, then there is congestion on the airport itself, on the taxi strips and ramps, in the terminal buildings, and on the parking lots and access roads.

Ten of our largest airports originate one-half of the passengers in the system. Many travelers other than those who originate also use these airports. These being the larger airports and larger traffic hubs, they serve connecting and through passengers in addition to originating and terminating passengers.

The causes of airport congestion are many. It stems from inadequate runways and taxiways, insufficient loading gates, inadequate space inside and outside the terminal building for receiving the passenger in his automobile and processing him through the ticket counter, and inadequate ground transportation to and from the terminal.

I think it is fair to say that congestion has become increasingly noticeable because of unanticipated increases in air travel in excess of travel projections and the greater productivity of airline fleet changes associated with the transition from piston to jet aircraft, particularly the more available two- and three-engine jets.

Air traffic increases were anticipated to be projected at the rate of approximately 10 percent annually, whereas the increase this year will be over 20 percent.

We are fortunate to have a vital and growing industry; the immediate price is some inconvenience to passenger plans and schedule delays. The peaking of scheduled departures is part of the problem, but the major cause of today's congestion is the very large increase in air travel. We are doing what we can to encourage adjustments in routes and scheduling. We hope they will be undertaken voluntarily by the carriers.

In some circumstances, congestion could be relieved through the use of other available airport facilities, particularly for connecting and through passengers whose travel does not terminate in cities where congestion occurs and therefore do not require routing through them.

This is a problem that must be attacked by communities, airlines, industry, and local and Federal governmental agencies.

Two years ago in March 1964, the Congress extended the Federal aid to airports program for a 3-year period, from fiscal year 1965 through 1967.

The Federal Aviation Agency has used this authority and the funds granted to improve further the Nation's airport system. In the last 2 years of our operation under the extension authorized in 1964, the FAA has allocated funds totaling more than \$172 million to assist communities in all areas of our country to develop airports benefiting the public.

The allocations made in the 1965 program are assisting the construction and improvement of nearly 400 public airports. The 1966 allocations provide aid in the development and improvement of more than 490 public airports.

The Agency has used the additional authority and responsibility given to it under the 1964 amendments to strengthen the program and insure the effective use of public funds. Of special importance has been the requirement added in 1964 that airport projects not be inconsistent with area plans.

Under that provision, FAA has made substantial progress in making the airport a part of comprehensive metropolitan planning by working closely with the Department of Housing and Urban Development and in cooperation with State agencies and local sponsors.

Airport owners are being required to recognize their responsibility for compatible land uses near the airport and the need for zoning and control. The FAA and the Department of Housing and Urban Development have developed procedures under several urban assistance programs to more effectively relate the airport to the community it serves.

Under the Department of Housing and Urban Developing urban planning assistance program, financial aid is given to State, metropolitan and other planning agencies to assist their comprehensive planning programs. Under that program, all planning applications are reviewed by FAA field offices to insure that airport needs, airport access and compatible land uses are considered in comprehensive planning programs.

Under the Department of Housing and Urban Development open space program, grants are available to local governments for open space land acquisition. Use of this program to insure compatible land use has been actively encouraged by FAA.

Procedures have been established by FAA with the Department of Housing and Urban Development to assure that airport protection needs are properly considered in all open space land acquisition programs. Interagency coordination procedures have been established for review of all comprehensive renewal and urban redevelopment plans to insure that airport needs are considered.

The FAA actively encourages communities to participate in the urban mass transportation program administered by the Department of Housing and Urban Development. Guidance to airport sponsors and local governments on this important subject has been issued by the FAA.



We are also looking ahead. We recognize that what has sufficed until now will not necessarily be a satisfactory pattern for the future. Airports can no longer be looked at solely by themselves in evaluating community need. They must be viewed as part of the overall transportation system in conjunction with other elements of the system and other aspects of community activities to which they relate. We must introduce a systems approach to future airport development.

Coincidentally with the marked increase in air travel, the Nation has seen a rapid expansion of urban and built-up areas. The President's message on transportation to the Congress this year emphasized the importance of airports in the national transportation picture and the need to improve the means and time of travel between airports and urban centers.

The near and long-range future poses requirements, also, to accommodate the smaller, shorter jet airline aircraft, to provide a proper opportunity for the rapidly developing transportation role of privately owned general aviation aircraft and to anticipate the need associated with the development of stretched jets and jumbo jets, the future role of the supersonic aircraft, and STOL or short takeoff and landing aircraft.

Associated with these needs are the problems arising from noise and the impact of the increasing volume of aircraft operations on the daily lives of travelers and the people who live in areas adjacent to airports.

Thus, we believe the time has come to take a long look ahead and think of future airport programs in terms of a systems approach that will relate the airport to all other facets of community and transportation requirements.

I have initiated such studies within the Agency. These studies will utilize our facilities and the facilities of all other Government agencies whose resources can contribute to improved future programs. Our systems approach will also insure that program development will be carried out in conjunction with the planning of the air carriers, developments in the manufacturing industry, international aviation developments, the rapidly developing surface transportation technology, and with complete awareness of urbanization trends.

The bill before you would authorize maximum annual appropriations of \$75 million for each of the fiscal years 1968, 1969, and 1970; a total of \$225 million for the 3-year period.

This is the same level of authorization provided for the fiscal years 1965, 1966, and 1967 when the authorization was last extended. We believe that this authorization level should be continued for the program for the next 3 fiscal years.

We are, of course, aware that many of our aviation friends concerned with airport development at the State and local level believe that an annual authorization of \$75 million is insufficient. And it is true that this level of Federal participation does not provide matching funds for every local dollar that is available for all eligible airport development. This is a situation which is common to all Federal grant-in-aid programs.

What is intended is that through this program the Federal Government will make a significant contribution toward meeting the airport needs of the Nation's air commerce while continuing to recognize the primary responsibility for constructing, improving and operating the Nation's airports rests with State and local authorities.

The aim is to provide an incentive to local communities throughout the Nation to support needed airport development. We believe the amounts proposed will accomplish this purpose as they have in the past.

The proposed program represents in our judgment and that of the President a reasonable allocation of Federal funds to airport development in light of our defense requirements and other budgetary needs, including other transportation requirements.

We therefore, Mr. Chairman, urge the enactment of this legislation. Thank you.

The CHAIRMAN. Thank you, General McKee.

Mr. Friedel, any questions?

Mr. FRIEDEL. Mr. Chairman, I just want to compliment General McKee for the very fine statement. I think it is very good, and I am glad he testified about zoning, about noise, and also about guidance to the airports for good transportation.

I want to compliment you for your very fine statement.

General McKee. Thank you, Mr. Friedel.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

General, I am wondering if the time hasn't come when we ought to change the percentage of participation required by the local airports in connection with their financing; in other words, if this money should not be spread out a little thinner and we might accomplish a little more.

Many of these airports are in pretty good financial shape and if they would make their landing costs a little higher the airlines I think can stand a little more of the expense, and it seems to me that we have reached the time when it would be well to try and change the percentage that we have in connection with the allocations.

General McKee. Mr. Younger, you make a very good point and one that I think is important at this particular juncture. I think that the committee should recognize that the way the law reads now, and I think this is a general misunderstanding in the country, the Federal Government is not required to match the funds at a 50-percent level. Everybody thinks that if the community raises 50 percent the Federal Government is committed to raise the other 50 percent, but the law says the FAA may contribute up to 50 percent. So we have the authority now to say, if we think a community is getting enough business, that they don't need all the 50 percent, we could then go in for 40 percent or 30 percent and take these funds to help out other communities that do not have that kind of business. So your point is well taken and I think in the FAA we have to take a slightly different tack than we have taken in the past.

Mr. YOUNGER. How many cases have you had where you have gone less than 50 percent?

General McKee. I will have to ask Mr. Morrow for that. Historically, Mr. Morrow, who has been in this business for years, and Mr. Thomas, tell me that we have participated to the 50-percent level, but your point is well taken.

Mr. YOUNGER. My point is that as long as it is in the law you will have everybody on your neck for that participation.

General McKee. That is exactly what I have.

Mr. YOUNGER. And I am wondering if the time hasn't come when we ought to properly protect you and the FAA by inserting a different

percentage in the law or making it in some way more mandatory that a shift be made.

General McKEE. Mr. Thomas, would you like to address yourself to that question?

Mr. THOMAS. Yes, sir; if I may.

Mr. Younger, we do contribute 50 percent on individual projects, but in the total airport construction cost to the community we may have less than 10 percent participation.

Mr. YOUNGER. I appreciate that.

Mr. THOMAS. And the law is now clear by saying that it shall not exceed 50 percent, so I think the law is all right. It is the question of the determination of how much funds would go into each individual community. The larger the community, usually the smaller the percentage of the funds the Federal Government contributes to it.

Mr. YOUNGER. I think it is something that our committee, when we mark up the bill, ought to give some consideration to. Another idea that I have is that the demand, at least in our area, seems to be on aid to the general aviation fields to relieve the international airport, and take care of the small planes. There are so many of them now that there is really demand for aid in the general aviation field.

General McKEE. As you know, the committee in the past and also in this bill has wisely stipulated that \$7 million of this amount will be used exactly for the purpose that you speak of and we are very careful to see that it is done.

Mr. YOUNGER. I am not so sure with the growth of the private airplanes, the executive planes, that that is a sufficient amount to assist in the construction and enlarge the existing airports for that purpose.

General McKEE. I would agree, looking at some of our major terminals, as they should reach a point of being self-sufficient, that less should go into some of these and more into other areas where they do not have the capability of providing the improvements that are necessary for overall improvement of our air transportation system.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Thank you, Mr. Chairman. I have no questions but I would just like to join in welcoming the general and his associates to our committee and also to pay tribute to the fine job that the FAA is doing.

General McKEE. I appreciate that, Mr. Jarman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. I have no questions, Mr. Chairman. I would just like to join our colleague, Mr. Jarman, in expressing appreciation to the general and his associates for having done what I think is a very splendid job and having made a splendid presentation to this committee.

General McKEE. Thank you. I appreciate that.

The CHAIRMAN. Does the gentleman from Texas have any questions?

Mr. PICKLE. Mr. Chairman, I just want to welcome to the committee General McKee and representatives of his fine organization. I haven't been able to hear all his testimony, but I will certainly read it now, and I appreciate you gentlemen coming up. This, I think,

is a straw in the wind of some big air industry problems we have in the country and though this bill may be the base, it is not the answer. I know that the general and these other men here will be working with us to help find a solution to these airport problems.

General McKee. Apropos of what Mr. Pickle says, Mr. Chairman, I would like to make one other statement that is not clear in my prepared statement and one that I know Mr. Pickle and other members of the committee are very much concerned about. I think the time has come when we have to back off and look at the total national air transportation system in the 1970's and 1980's, and as best we can estimate what that air transportation system is going to look like, not only as to types of aircraft, number of passengers, and all the other facets that go with it. Then the FAA, other Government agencies involved, the airlines, the States, and the local communities, estimate what has to be done to be able to meet the problem that is clearly in front of us. This includes not only airports, but air traffic control; it includes a very—to me, a vitally—important item of transportation: of getting people from downtown in our major metropolitan areas to the airports, rapid transit, if you want to call it that. We can handle this problem and I believe by concerted effort and exerting some leadership here we can get this job done.

I know all the airlines are intensely interested. I have talked to the presidents of many of the airlines. I have talked to the people of ATA. They are very much interested and I know that ATA will work closely with us on this problem. I am sure all the individual airlines will and I think we can get the cooperation of communities around the country, including Baltimore, Mr. Friedel.

Mr. FRIEDEL. Friendship.

Mr. PICKLE. Mr. Chairman, may I add further that what the general is saying strikes at the very heart of the problem that we have facing us in the next 20 years and in the general transportation field. I am hopeful, in line with conversations and letters I have had with you, Mr. Chairman, that this committee might have the privilege of visiting with General McKee, and Mr. Thomas, and representatives of the CAB and FAA in a session that will explore this in some detail because it is a clear and present problem that we have. We must approach it with all dispatch.

General McKee. Couldn't agree more with you, Mr. Pickle.

The CHAIRMAN. Does the gentleman from Virginia have any questions?

Mr. SATTERFIELD. No questions, Mr. Chairman.

The CHAIRMAN. Thank you.

General McKee, we commend you, too, and the rest of your associates, and thank you for coming up and presenting your views. I think, too, you have been doing a fine job and the fact that you say we must look ahead I think is the answer to all of our problems in this country, just not for today, on any issue, and communication and transportation I have said many times are the basic factors that have made us a great country, and certainly air travel has been outstripping all other modes of transportation; that is, it leaps ahead and it looks like it is going to more so in the years ahead. And that is one of our great problems, as you say, looking ahead and planning for those years.

We thank all of you very kindly for coming up.

General McKee. Mr. Chairman, I appreciate this opportunity to appear before this committee and in conclusion I would like to say that I deeply appreciate the understanding of all the members of this committee in the air transportation problem.

I have never had better support in my life in all the years I have been appearing before the Congress.

The CHAIRMAN. Thank you.

General McKee. Thank you, gentlemen.

The CHAIRMAN. The next witness will be Mr. E. Thomas Burnard, executive vice president of the Airport Operators Council International.

**STATEMENT OF E. THOMAS BURNARD, EXECUTIVE VICE PRESIDENT, AIRPORT OPERATORS COUNCIL INTERNATIONAL, WASHINGTON, D.C.**

Mr. BURNARD. Thank you, Mr. Chairman.

The CHAIRMAN. I wonder now how long your statement is and if you could put it in the record and summarize it for us.

Mr. BURNARD. Sir, I would be pleased if you would put the whole statement in the record and I would like to highlight just a couple of points, if I may.

The CHAIRMAN. All right.

Mr. BURNARD. I will identify myself first. I am E. Thomas Burnard, executive vice president of the Airport Operators Council International, a nonprofit association of the organizations and public agencies which own or operate the principal airports of the 50 States and Puerto Rico, as well as some abroad.

We believe that among the most compelling and urgent reasons for the continuation of the Federal airport program are:

First, the air traffic growth in the United States continues unabated.

Second, airport capacity must be kept in balance with the airway capacity, the technological developments in aeronautics, and the ever-increasing air transportation needs of the Nation.

Third, the capital investment needed to bring the airport facilities up to the present and future requirements of the national aviation system is far beyond the capabilities of the local communities to produce unless the Federal Government continues to contribute its fair share.

Fourth, stability in civil airport development and in the orderly development of aviation will be lost unless the pending legislation becomes law in this session.

I would just like to mention briefly one point in connection with increasing airport capacity which was touched on by General McKee. We believe that the increase of airport capacity means the ability to handle more aircraft on the landing area and ramps, and more people and goods in the terminal area.

Increased airport capacity means just that: the ability to handle more aircraft on the landing area and ramps and more people and goods in the terminal area. This task alone will tax the resources of most communities to the utmost. Increasing airport capacity will involve the expenditure of billions of dollars for additional runways, taxiways, ramps, new and expanded passenger terminals and cargo

terminals, as well as whole new airports. Land acquisition in large quantities will be needed for these additional facilities.

Increased capacity, as we use it, does not imply, however, that higher volumes of aircraft, generating higher levels of power and thrust, can be permitted to render intolerable and habitation and use of land near airports or enroute.

Airport operators have been greatly encouraged by President Johnson's official recognition of the aircraft noise problem as one which requires a Federal solution, and by the work of Dr. Donald Horning in the White House Office of Science and Technology as well as by General McKee, the Administrator of the Federal Aviation Agency.

Presently pending before this committee is a bill sponsored by the administration which, if enacted, will be the first major step toward an overall, rational solution to the aircraft noise problem at the national level.

A great many of the public agencies and organizations which own or operate airports in the United States sincerely wish that these airports could be entirely self-supporting—that no subsidy would be needed from local communities, States, or the Federal Government; and that the regulations of the FAA applicable to Federal aid to airports programs could be dispensed with, and that revenues from airport users would be sufficient for airport operation and normal expansion. But that time has not yet come and, unfortunately, we do not see it coming in the near future.

The capital expenditures which will be required to produce the airport capacity needed during the next 5-year period are greatly in excess of the State and local funds which will be available. Until such time as airports reach a period of stability in capital investment requirements—we see no natural end to the need for State and Federal programs to assist local airport development.

In 1965 a national airport survey was conducted by our organization, in conjunction with the American Association of Airport Executives, and the National Association of State Aviation Officials, which another witness will describe in detail.

This survey shows a need for a \$2 billion airport development program by 1970. After local and State funds are taken into account, over \$150 million in Federal funds will be needed in each of the next 4 years just to maintain airport capacity to meet growth needs.

Noise and technological changes could add substantially more.

Unless the Federal Government contributes its fair share, the national airport system will become the bottleneck of future air transportation in this country.

The members of this committee know well the critical period our national system of airports has gone through since 1946 because Federal assistance has been too little and too late.

It has been an uphill battle to get the present \$75 million per year, which is proposed to be continued for the next 3 years by the legislation pending before this committee. I believe we all know that this should be doubled to meet the demonstrated need. As previously noted, the 1965 national airport survey conservatively indicates a need for Federal assistance in airport construction approximating \$157 million per year. FAA's own 1966 national airport plan lists eligible

projects for airport construction and improvement totaling \$1.28 billion over the next 5 years.

However, for fiscal year 1967, the year we are now in, total about \$275 million from over 700 airport sponsors, far above any previous level of sponsor request.

Incidentally, on that point, although these allocations under the law should have been made last January, they still haven't been made and we understand there has been another delay that has been encountered within the FAA, so that it will probably be at least another month before they are announced.

This means that there has been a great deal of construction time lost during this past construction season. In the face of this need, Mr. Chairman, we have been distressed in recent months to note attempts to cut back this program in some parts of the executive branch. We presently are concerned that the administration might not heed the wishes of the Congress in retaining these funds. The entire air transportation system will suffer, Mr. Chairman, by any such action.

Our U.S. members believe that the national system of airports should be second to none in the world in terms of landing facilities, and passenger and cargo terminals, and that the Federal investment in airports should be consistent with the Federal financial investment in highways, and other mass transportation programs.

Mr. Chairman, with the continuation of the Federal Airport Act at a high level of annual appropriations, the public airports of the United States will more closely approach the statutory goal of "adequacy"—for today and for tomorrow—and we request that this important committee give its support to achieve this goal.

Thank you, sir.

(Mr. Burnard's prepared statement follows:)

**STATEMENT OF E. THOMAS BURNARD, EXECUTIVE VICE PRESIDENT, AIRPORT OPERATORS COUNCIL INTERNATIONAL**

Mr. Chairman and Members of the Committee: I am E. Thomas Burnard, Executive Vice President of the Airport Operators Council International (AOCI), a non-profit association of the organizations and public agencies which own or operate the principal airports of the fifty States and Puerto Rico, as well as some abroad. In 1965, U.S. Member airports enplaned 90% of the domestic and all of the international scheduled airline passengers. In addition, our Members operate many general aviation airports which supplement the larger airports in their communities and regions.

The local, State and county United States Members of the Council, whose views this statement represents, are grateful for this opportunity to support legislation to extend the Federal Airport Act. The Act, which has authorized grant-in-aid appropriations for the construction and improvement of U.S. public airports since its enactment in 1946, must be extended once again if the airport—the essential ground element of the National Aviation System—is to keep in step with the growth and technological developments of aviation.

Mr. Chairman, our statement will be brief. We know of, and greatly appreciate, this Committee's past support for the Federal Aid To Airports Programs (FAAP) and its awareness of the present necessity for continuing it.

We believe that among the most compelling and urgent reasons for the continuation of the Federal Airport Program are the following:

*First*—The air traffic growth in the United States continues unabated. Aircraft operations at airports with FAA control towers have increased 70% in the last decade and are forecast to increase 60% in the next 6 years.

*Second*—Airport capacity must be kept in balance with (a) airway capacity, (b) the technological developments in aeronautics, and (c) the ever-increasing air transportation needs of the Nation.

*Third*—The capital investment needed to bring the airport facilities up to the present and future requirements of the National Aviation System is far

beyond the capabilities of the local communities to produce unless the Federal Government continues to contribute its fair share.

*Fourth*—Stability in civil airport development and in the orderly development of aviation will be lost unless the pending legislation becomes law in this Session.

#### *Growth*

Without quoting the usual percentage figures on past growth and forecast growth, let me merely point out for the record that

the airlines have had a 14% average growth per year during the last 15 years making air transportation the fastest growing industry in the country. Runner-up was public utilities with 8.4% and the U.S. gross national product has been 3.7%.

cargo was up 25% in 1965 over 1964 and 382% over 1955.

\$13.7 billion dollars worth of airline airplanes will be bought by U.S. carriers during the next 10 years.

general aviation aircraft—the fastest growing element of aviation—will go from 97,300 in 1965 to at least 125,000 by 1975.

for every 1,000 passengers now using U.S. airports, there will be 1,700 in 1971 and over 2,000 in 1975.

for every 1,000 aircraft operations at U.S. airports today, there will be 1,600 in 1971 and more than 2,000 in 1975.

general aviation will represent 77% of total U.S. aircraft operations by 1971.

#### *Capacity*

This growth means that airport capacity must drastically expand. This will take the form of more runways, taxiways, ramps and bigger terminal facilities at existing airports; additional airports to serve the larger metropolitan areas where one, two, three, or more airports now exist; and new and expanded airports to supplement and replace airports at the medium and smaller size communities, which will be receiving the small jet in the near future.

It means that an additional capacity and reliability must be built into the system of air navigation, traffic control, approach and landing aids and procedures to assure that the *air space capacity* and the *airport capacity* grow and expand together in an orderly fashion.

Increased airport capacity means just that:—the ability to handle more aircraft on the landing area and ramps, and more people and goods in the terminal area. This task alone will tax the resources of most communities to the utmost. Increasing airport capacity will involve the expenditure of billions of dollars for additional runways, taxiways, ramps, new and expanded passenger terminals and cargo terminals, as well as whole new airports. Land acquisition in large quantities will be needed for these additional facilities.

Increased capacity, as we use it, does not imply, however, that higher volumes of aircraft, generating higher levels of power and thrust, can be permitted to render intolerable the habitation and use of land near airports or enroute.

The Senate Aviation Subcommittee wisely stated in its 1959 report on the Federal Airport Act that

“... it is time that aircraft be designed to fit the airport system and not vice versa.”

Unfortunately, the Committee's recommendations to the Executive Branch have not yet been carried out, although some progress is in sight.

The subsonic jet of 1958-59 brought not only a jump of 50% in the speed and payload of the aircraft, but it also brought runway extensions of 25% to 40%, plus a need for larger clear zones and expanded approaches at the ends of these runways. The airport had once again been modified to fit the airplane. The stretched subsonic aircraft which has just been certificated may cause runway stress and noise problems of a degree never before experienced.

And unless prompt steps are taken by the Federal government to control the aircraft characteristics relating to runway length, pavement stress and aircraft noise, then airport capacity can never be intelligently planned or reasonably financed.

Airport operators have been greatly encouraged by President Johnson's official recognition of the aircraft noise problem as one which requires a Federal solution, and by the work of Dr. Donald Horning in the White House Office of Science and Technology as well as by Administrator Wm. F. McKee of the Federal Aviation Agency.



Presently pending before this Committee is H. R. 16171, an Administration-FAA endorsed bill, which, if enacted, will be the first major step toward an overall, rational solution to the aircraft noise problem at the national level. Passage of this legislation will give the FAA authority to control the amount of noise which aircraft can make. The effective control of aircraft noise by the FAA will, in turn, limit Federal and local expenditures necessary for airport clear zones, buffer zones, and air easements.

A great many of the public agencies and organizations which own or operate airports of the U.S. sincerely wish that these airports could be entirely self-supporting—that no subsidy would be needed from local communities, states or the Federal Government; that the burdensome regulations of the Federal Aviation Agency applicable to Federal Aid to Airports Program grants could be dispensed with, and that revenues from airport users would be sufficient for airport operation and normal expansion. But that time has not yet come and, unfortunately, we do not see it coming in the near future.

The capital expenditures which will be required to produce the airport capacity needed during the next five-year period are greatly in excess of the State and local funds which will be available. Capital expenditures have been so great in the past and will continue at a rate so high into the future that the U.S. communities which operate public airports generally are not able to produce sufficient revenues from airports users and tenants to operate and maintain their airports; to retire past debts; and to finance new developments. Until such time as airports reach a period of stability in capital investment requirements—we see no natural end to the need for State and Federal programs to assist local airport development.

The 1965 National Airport Survey, conducted by the Airport Operators Council International in conjunction with the American Association of Airport Executives and the National Association of State Aviation Officials, which another witness will describe in detail, shows a need for a \$2 billion airport development program by 1970. After local and State funds are taken into account, over \$150 million in Federal funds will be needed in each of the next four years just to maintain airport capacity to meet growth needs.

Noise and technological changes could add substantially more.

Unless the Federal Government contributes its fair share, the National Airport System will become the bottleneck of future air transportation in this country.

#### *Stability*

The Members of this Committee know well the critical period our National System of Airports has gone through since 1946 because Federal assistance has been too little and too late.

The airport system suffered almost disastrously in the early 50's from widely vacillating Federal financial support from year to year. Then, when a modest 4-year program was instituted in the middle 50's, the Jet Age imposed huge new requirements on the system.

It has been an uphill battle to get the present \$75 million per year, which is proposed to be continued for the next three years by the legislation pending before this Committee. I believe we all know that this should be doubled to meet the demonstrated need. As previously noted, the 1965 National Airport Survey conservatively indicates a need for Federal assistance in airport construction approximately \$157 million per year. FAA's own 1966 National Airport Plan lists eligible projects for airport construction and improvement totaling \$1.28 billion over the next five years. Pending requests for funds for the FY '67 program total about \$275 million dollars from over 700 airport sponsors—far above any previous level of sponsor requests.

In the face of this need, Mr. Chairman, we have been distressed in recent months to note attempts to cut back this program in some parts of the Executive Branch. A rescission of \$21 million of the \$71 million appropriated in 1966 for the FAAP Program was attempted unsuccessfully in the recent appropriation process. We presently are concerned that the Administration might not heed the wishes of the Congress in retaining these funds and might administratively impound part of these funds so badly needed by the nation's public airports. The entire air transportation system would suffer, Mr. Chairman, by any such action.

We are realistic enough to recognize that the Congress is faced with the demands for defense funds and broad new social programs. We believe, however, that the National Aviation System—the fastest growing and one of the most important parts of the national transportation system being developed under

the leadership of President Johnson—can be seriously jeopardized by failure to ensure that airport development keeps pace with the technological developments, the growth, and the other federally-financed developments in aviation and air safety.

Our U.S. Members believe that the National System of Airports should be second to none in the world in terms of landing facilities, and passenger and cargo terminals, and that the Federal investment in airports should be consistent with the Federal financial investment in highways, and other mass transportation programs.

Even \$150 million per year won't begin to do the job if the characteristics of the aircraft require that extensive runway extensions and property interest acquisitions be made beyond the boundary of the present airports for safety and noise abatement purposes. Further, we are not able to estimate either locally or on a Federal level just how much it would cost to acquire the property interests which would have to be acquired to protect airport neighbors from the noise of future aircraft on which no noise limits have yet been imposed.

Mr. Chairman, with a continuation of the Federal Airport Act at a high level of annual appropriations, the public airports of the U.S. will more closely approach the statutory goal of "adequacy"—for today and for tomorrow—and we request that this important Committee give its support to achieve this goal.

Thank you.

The CHAIRMAN. Thank you, Mr. Burnard.

Any questions of Mr. Burnard, Mr. Adams?

Mr. ADAMS. I have one question, Mr. Chairman.

Is it your position that the Federal Government should also do something about the ending its authorization for payments for the air easements for cleared space that are now becoming, I guess some of them are in litigation and some of them have already been decided—I know they have in our State—for noise abatement easements at the extensions and in adjacent areas to the airports?

Mr. BURNARD. Congressman, we haven't proposed it in precisely the form that you have just outlined it. However, we feel strongly that there is a need for Federal financial assistance in the noise field in addition to the pending legislation relating to regulatory power by the FAA.

Mr. ADAMS. Have you proposed anything in terms of the eligibility for Federal participation with the local airports in the extension of the buffer zone area?

Mr. BURNARD. Yes, sir. Under the present act the law provides that "airport development" is eligible. The FAA has in a few instances interpreted that phrase to mean participation in acquisition of land or land interests in the buffer zone area. The real problem is that there has historically been insufficient money in this program to build runways, taxiways, and landing area capacity requirements, those needed for safety and those needed for simply expediting traffic, so that there is simply no money in the program for the type of project that you are talking about, Congressman, the off-airport type of land acquisition. This is why we are quite hopeful under the current White House aircraft noise abatement activities of the Office of Science and Technology that an executive branch program will be developed that will do two things: First, clearly assure the Federal Aviation Agency Administrator that he has the authority to regulate the noise at the source and other places; and second, that a financial program be provided which could be in any of several forms that will take care of the problem that you raise.

Mr. ADAMS. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham, any questions?

Mr. CUNNINGHAM. No, sir.

The CHAIRMAN. Mr. Mackay?

Mr. MACKAY. No questions.

The CHAIRMAN. Thank you very kindly, Mr. Burnard.

Mr. BURNARD. Thank you, Mr. Chairman. It is a pleasure to appear before this committee.

The CHAIRMAN. Mr. Russell Hoyt, executive director of the American Association of Airport Executives.

Mr. Hoyt, will you submit your statement in the record and summarize it for us?

**STATEMENT OF F. RUSSELL HOYT, EXECUTIVE DIRECTOR,  
AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES**

Mr. HOYT. Yes, Mr. Chairman. I have just four pages which I will submit for the record and, if I may, I will just speak for 2 minutes on this national airport survey which we conducted last year with the two associations, the one that Mr. Burnard represents and also the National Association of State Aviation Officials.

I will just say for the record that I am executive director of the American Association of Airport Executives and this association is a professional group of airport executives which include in their group the men who have the responsibility of operating, maintaining, and developing some 400 public-use airports.

I will go right to this survey, if I may. Other witnesses have cited and will cite figures and forecasts on the rapid increase in both the number and capacity of aircraft. To determine just what airports would be required to do to cope with aviation's tremendous growth, AAAE, together with the Airport Operators Council and the National Association of State Aviation Officials last year conducted a survey of needed airport development for the 4-year period, 1966 through 1969. Questionnaires were sent to most of the 3,600 publicly owned airports in the United States, and returns were received from 1,799 of these airports, or 50 percent—certainly a very adequate sample. The survey indicated that the airports must make improvements during the next 4 years totaling \$2 billion.

It is this survey that I ask be put in the record. It is about a nine-page summary. I have a few extra copies here if anyone wants to see it before the record is released. This is the fourth such survey conducted since 1955.

We are satisfied that the survey figures are reasonably accurate and on the conservative side. For example, since 1956 a year-by-year review of the estimated cost of planned development, as found by the surveys, compared with the total of requests for aid under the Federal-aid-to-airports program shows that the survey figures have been consistently understated. The next 4 years will be no exception, we believe.

This estimated need for \$2 billion for airport development during the period 1966-69 is what only half of all the publicly owned airports say is needed; it would not be statistically sound to double the need indicated by 50 percent of the airports in order to arrive at a 100-percent figure. Nevertheless it is safe to assume that many of the airports not reporting in the survey will initiate airport improvements thereby making the \$2 billion estimates very conservative.

The benefits of an adequate national system of airports are both local and national. Therefore the costs of development should be shared. The local governments assisted in many cases by the States stand ready to do their part. They will have \$1.3 billion available for needed improvements during the next 4 years; \$760 million of this must be spent for urgently needed improvements which are not eligible for Federal aid. About \$570 million will be available on a matching basis for such eligible Federal aid projects as runway extensions, land acquisition, and lighting. This leaves a deficit of some \$627 million during the next 4 years, or approximately \$157 million annually. More recent experience has shown this \$157 million need is substantially understated. For the Federal-aid-to-airports program for fiscal year 1967, the FAA has already received requests for aid totaling \$270 million. This clearly indicates the urgent need to put under grant the entire \$71 million already appropriated by Congress. It also makes a very strong case for raising the level of future funding to at least \$150 million annually.

Benefits local and national are not derived solely from airports having scheduled air service. The so-called general aviation airports play a vital role in serving the needs of business flying, air taxi service, aerial applicators, the carriage of the mails, forest fire protection, and so forth.

The dollar needs of such airports are relatively small compared with those of the large air carrier airports but the needs are nonetheless urgent. To provide for a truly adequate national system of airports, the general aviation airport must be given full recognition in the establishment of priorities and allocation of funds in the Federal-aid-to-airports program.

I would be glad to answer any questions about this survey, but in the meantime thank you very much, Mr. Chairman and gentlemen.

The CHAIRMAN. Thank you, Mr. Hoyt.

Mr. PICKLE. Mr. Chairman, did I understand the gentleman that the results of the survey will be included with his statement?

Mr. HOYT. With the permission of the chairman.

The CHAIRMAN. Yes, that is right.

Any questions?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. No questions.

The CHAIRMAN. Any questions over here on this side? Any questions over here?

If not, Mr. Hoyt, we thank you very kindly, and we will be interested in looking at the results of your survey.

Mr. HOYT. Thank you, gentlemen.

The CHAIRMAN. You say you have some extra copies?

Mr. HOYT. Yes, I do.

(Material furnished by Mr. Hoyt follows:)

**STATEMENT OF F. RUSSELL HOYT, EXECUTIVE DIRECTOR OF AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES**

Gentlemen: My name is Russell Hoyt, I am Executive Director of the American Association of Airport Executives. This Association, commonly referred to as AAAE, is a professional group of airport executives. Included in this group are the men who have the responsibility of operating, maintaining and develop-

ing some 500 public-use airports. The airport administrators in our membership represent an excellent cross-section of airports throughout the United States—from the large air terminals down through the medium sized airports to the small general aviation fields. It is for this reason that I believe that we can comment rather authoritatively with respect to airport needs and development.

Gentlemen, there is an urgent need for an expansion of the Federal Airport Act. Airports in the next five years will be required to handle: 55% more passengers; double the number of jet transports; and 64% more General Aviation aircraft. These are impressive forecasted increases—however they are undoubtedly on the low side—to date, aviation's actual growth has consistently exceeded forecasts by significant margins.

Much has been written lately on the so called airport crisis. Perhaps crisis is not the proper term but it is true that airports are experiencing extreme difficulty in keeping pace with the very rapid increase both in size and number of aircraft. New short haul jets will soon be bringing service to communities, many of them now served by airports adequate only for DC3s. The stretch DC8, announced only last year, will be delivered to the airlines next month. Smaller jet aircraft in air taxi service or transporting business men and shipments, will in increasing numbers be operating into airports that only recently had to accommodate small prop aircraft, much less demanding in runway length. The jumbo jets can be expected service by 1970.

To determine just what airports would be required to do to cope with aviation's tremendous growth, AAAE, together with the Airport Operators Council and the National Association of State Aviation Officials late last year conducted a survey of needed airport development for the four-year period, 1966 through 1969. Questionnaires were sent to most of the 3,600 publicly owned airports in the United States, and returns were received from 1799 of these airports, or 50%—certainly a very adequate sample. The survey indicated that the airports must make improvements during the next four years totaling two billion dollars. The survey findings are contained in a report which we ask be included in the record. I have extra copies in the event anyone would like to read it before the record is released. This is the fourth such survey conducted since 1955. We are satisfied that the survey figures are reasonably accurate and on the conservative side. For example, since 1956 a year-by-year review of the estimated cost of planned development, as found by the surveys, compared with the total of requests for aid under the Federal-aid-to-Airports Program, shows that the survey figures have been consistently understated. The next four years will be no exception, we believe. This estimated need for two billion dollars for airport development during the period 1966-1969 is what only half of all the publicly-owned airports say is needed; it would not be statistically sound to double the need indicated by 50% of the airports in order to arrive at a 100% figure. Nevertheless it is safe to assume that many of the airports not reporting in the survey will initiate airport improvements thereby making the two billion estimates very conservative.

The benefits of an adequate national system of airports are both local and national—therefore the costs of development should be shared. The local governments assisted in many cases by the states stand ready to do their part. They will have 1.3 billion dollars available for needed improvements during the next four years. \$760 million of this must be spent for urgently needed improvements which are not eligible for federal aid. About \$570 million will be available on a matching basis for such eligible federal aid projects as runway extensions, land acquisition and lighting. This leaves a deficit of some \$627 million during the next four years, or approximately \$157 million annually. More recent experience has shown this \$157 million need is substantially understated. For the Federal-aid-to-Airports Program for FY 1967, the FAA has already received requests for aid totaling 270 million dollars. This clearly indicates the urgent need to put under grant the entire \$71 million already appropriated by Congress. It also makes a very strong case for raising the level of future funding to at least 150 million dollars annually.

Benefits local and national are not derived solely from airports having scheduled air service. The so-called general aviation airports play a vital role in serving the needs of business flying, air taxi service, aerial applicators, the carriage of the mails, forest fire protection and so forth. The dollar needs of such airports are relatively small compared with those of the large air carrier airports but the needs are nonetheless urgent. To provide for a truly adequate national system of airports, the general aviation airports must be given full recognition

in the establishment of priorities and allocation of funds in the Federal-aid-to-Airports Program.

Two statements from the Report of President Kennedy's Task Force on National Aviation Goals "Project Horizon" are particularly applicable in a consideration of H.R. 13995. With respect to the need for advance funding, the report urged "that Congress commit funds for as long a period of time as possible—with five years being the absolute practical minimum. The substantial sums of money required for major airport improvement or construction imposes great and time-consuming burdens on communities. Likewise the legal and political considerations inherent in large general obligation bond issues or revenue bond financing do not permit a precise time schedule and in many cases take years to accomplish. The ability therefore for communities to count on the availability of funds which may not physically be drawn down for a period of time in the future is a necessary ingredient of sound financial planning with the political and fiscal atmosphere in which many communities must plan and work."

Regarding federal airport aid, the report states: "One of the greatest single contributions to the progress of the Nation's air transportation service has been the enlightened attitude of Congress in providing funds for airport construction and improvement under the Federal Airport Aid Program. In our opinion, this program is sound in concept and with the increasing requirement for additional landing areas throughout the country on the one hand, the need to attain highest safety and operations standards at existing terminals on the other, the continuation of enabling legislation for the period of time embraced in this report (through 1970) is imperative in national interest."

Gentlemen, thank you for the opportunity to appear before you today.

## SUMMARY, NATIONAL AIRPORT SURVEY

### PLANNED AIRPORT DEVELOPMENT DURING 1966, 1967, 1968, 1969

Report of a Survey of the Nation's Public Airports Conducted Jointly by Airport Operators Council, American Association of Airport Executives, National Association of State Aviation Officials, December 1965

(This survey is the fourth survey of airport development needs conducted by the three associations since 1955.)

### INTRODUCTION

Both government and private enterprise forecast tremendous growth in the number and capacity of aircraft. The demands on airports to provide the necessary improvements to keep pace with this growth will be great.

At the beginning of 1965 there were 9,500 airports in the United States. Approximately 5,900 of these, or 62%, are privately owned. The remaining 3,600 airports are publicly owned primarily by units of local government.

The local governments, considering the many other demands for their funds and the many national benefits derived from an adequate system of airports, cannot be expected to finance entirely the needed airport improvements. Although the local governments in some cases are receiving considerable assistance from their state governments, funds from other sources will be required.

Both to determine the need for continuance of the Federal Air to Airports Program (FAAP), and to demonstrate the significant role the local governments are playing in the development of a national system of airports, a national airport survey was conducted during the last three months of 1965.

The information sought by the survey was primarily:

(a) The total estimated cost of airport development required during the four-year period 1966 through 1969, with the costs separated between those items of development which are eligible for funds on a matching basis under the Federal Airport Act, and those not eligible;

(b) The estimated amount of state and local funds that will be available to meet the costs of this future airport development;

(c) The actual cost of public airport development projects, both eligible and ineligible for federal matching funds, completed during the five year period 1960 through 1964.

This National Airport Survey was conducted jointly by the  
 Airport Operators Council  
 American Association of Airport Executives  
 National Association of State Aviation Officials

and is the fourth such survey to be conducted by these three associations since 1955.

Following the procedure used in past airport surveys, Coordinators in each State sent questionnaires to all known airport operating agencies or local governmental units which owned a public airport, or proposed the development of a new airport within the next four years. Questionnaires once completed were returned to the State Coordinators who were responsible for tabulating the returns and compiling state summaries. These summaries were forwarded to the American Association of Airport Executives at Wilmington, Delaware, National Survey Headquarters, where a national tabulation was completed.

The condensed tabulation below shows the estimated costs of planned airport development (1966-1969) as indicated by the survey.

*Estimated Costs of Planned Airport Development for 4-Year Period 1966  
 Through 1969*

Items of development eligible for Federal matching funds:	
Land acquisition-----	\$255, 379, 000
Landing area-----	810, 817, 000
Lighting-----	85, 335, 000
Service buildings-----	45, 109, 000
Subtotal-----	1, 196, 640, 000
Other airport development planned (passenger and cargo terminals, hangars, other service buildings)-----	759, 169, 000
Total costs of airport development (1966-69)-----	1, 955, 809, 000
Sponsor funds expected to be available (1966-69)-----	1, 328, 750, 000
Needed Federal assistance for airport development-----	<sup>1</sup> 627, 059, 000
<sup>1</sup> Approximately \$157 million annually.	

ESTIMATED COST OF PLANNED AIRPORT DEVELOPMENT

The 1965 National Airport Survey indicated that the cost of needed airport improvements will continue quite uniformly during the next four years.

Year	Cost of Planned Improvements
1966-----	\$473, 023, 000
1967-----	503, 390, 000
1968-----	493, 571, 000
1969-----	485, 825, 000
Four years-----	1, 955, 809, 000

Airports reported future development under five broad categories and the national tabulation shows the following distribution:

	Amount	Percent
1. Land acquisition-----	\$225, 379, 000	13.1
2. Landing area-----	810, 817, 000	41.4
3. Lighting-----	85, 335, 000	4.4
4. Service buildings-----	45, 109, 000	2.3
5. Other development-----	759, 169, 000	38.8

1. Costs to acquire land needed for: airport expansion, landing aids, approach protection, noise buffer zones; also, costs of air rights or easements.

2. Costs of site preparation (including clearing, draining, filling, and grading), sodding, paving, resurfacing to build or improve landing strips, runways, taxiways, loading and parking aprons.

3. Costs of materials and installation of lighting for runways, taxiways, and aprons.

4. Costs of buildings to house field maintenance equipment and crash fire-renewe vehicles.

5. Costs of all improvements presently not eligible for federal aid, e.g. terminal buildings, cargo facilities, hangars, auto parking areas, etc.

Items 1 through 4 are eligible for federal matching funds. A national total of such items amounts to \$1,196,640,000, with land acquisition making up 21.3%, landing area 67.8%, lighting 7.1%, and service buildings 3.8%.

As noted on Page 3, airports will spend \$750 million for passenger terminal buildings, cargo facilities, parking areas and certain other items which are not eligible for federal aid under the FAAP.

This relatively large investment in passenger and cargo handling facilities is understandable when viewed in relation to the rapidly increasing carrying capacity of air carrier aircraft. This increased capacity per aircraft may, at many airports, result in a requirement for increased accommodations for passenger and cargo without necessarily significant improvements in the landing area.

The local governments, assisted by the states, will be required to provide 100% of the funds needed to build or improve passenger and cargo facilities and related items. Hence, \$750 million of the total \$1,328,750,000 of local and state funds estimated to be available must be used exclusively for these improvements. This will mean that \$570 million will be available as sponsor's funds for projects eligible for federal matching funds.

As \$1.2 billion (Federal and sponsor) will be required to meet all FAAP eligible airport development projects during the 1966-1969 period, there is an indicated need during the next four years of \$627 million FAAP funds, or about \$157 million annually. This contrasts sharply with the level of \$50 million for the Federal Aid to Airports Program proposed by the Administration for fiscal year 1967, and \$75 million per year for 1968, 1969, and 1970.

#### THE U.S. SYSTEM OF AIRPORTS—SURVEY PARTICIPATION

Of the 3600 publicly owned airports in the United States and Puerto Rico, 1799, or 50%, responded to the survey. It would not be statistically sound to double the \$2 billion need indicated by 50% of the airports in order to arrive at a 100% figure. Nevertheless, it is safe to assume that many of the airports not participating in the survey will initiate airport improvements during the period 1966 through 1969, thereby making the \$2 billion figure of planned airport development very conservative.

The questionnaires returned show the following participation by Hub Airports:

Hub	Total number	Number in survey	Percent
Large .....	21	16	77
Medium .....	38	36	95
Small .....	83	69	83
Non .....	373	270	72
Total .....	515	391	76

#### AIRPORT USAGE

Each airport participating in the survey was requested to provide actual or estimated number of aircraft movements during 1964, divided into three broad categories: air carrier, military, and general aviation. The national tabulation shows that at the 1799 airports reporting there were:

	Number	Percent
Air carrier operations .....	6,299,000	17.2
Military aircraft operations .....	2,791,000	7.6
General aviation operations .....	27,414,000	75.1
Total operations .....	36,504,000	100.0



Because "general aviation" is such a broad segment of aviation, including as it does everything that is not air carrier or military, the airports were requested to subdivide general aviation aircraft movements into air taxi, business aircraft, and "other." Not all airports provided this breakdown and of those that did, most stated the figures were estimates.

Using these estimates, it was found that general aviation movements were comprised of:

	Number	Percent
Business aircraft.....	6,085,000	22.0
Air taxi.....	1,782,000	6.5
Other general aviation.....	19,597,000	71.5
Total general aviation.....	27,414,000	100.0

It is interesting to note how closely these figures correspond with the FAA estimates of general aviation flying throughout the nation. The FAA Statistical Handbook of Aviation-1965 Edition, under "General Aviation Aircraft by Type of Flying, 1964" lists:

	Percent
Business .....	24
Air Taxi.....	6
All Other.....	70

#### COMPARISON WITH PREVIOUS SURVEYS

The results of the 1965 National Airport Survey indicated that the survey conducted in 1960 was accurate as to *estimated* 1961-1965 development costs and thus gives validity to the accuracy of the recent survey's estimate of future needs during the period 1966 through 1969.

The 1960 survey estimated that \$1,125 million was needed for planned airport improvements during the four-year period July 1961 through June 1965, or an average of approximately \$280 million per year. The survey just completed indicated that during the five-year period 1960 through 1964, the airports in fact improved facilities in the total amount of \$1,251 million, or an average of approximately \$250 million per year.

An explanation of the difference, approximately \$30 million per year, between the estimated amounts to be spent on improvements, and the amounts actually spent, can be found in the tabulation appearing on Page 7, which indicates the consistently low level of FAAP allocations compared with the level of sponsors' requests. During the 11-year period 1956-1966, sponsor requests exceeded actual Federal allocations by an average of \$86 million a year.

Federal funds allocated in relation to planned development and sponsor requests

(Millions of dollars)

Survey number	Year	Total estimated cost of planned development	Estimated Federal participation in projects	Federal funds requested	Federal funds allocated
		Col. 2	Col. 3	Col. 4	Col. 5
1	1960	\$281.1	\$241.1	\$231.6	\$221.4
	1961	277.4	247.1	237.4	227.4
	1962	273.6	243.6	233.6	223.6
2	1963	270.2	240.2	230.2	220.2
	1964	266.4	236.4	226.4	216.4
	1965	262.6	232.6	222.6	212.6
3	1966	258.8	228.8	218.8	208.8
	1967	255.0	225.0	215.0	205.0
	1968	251.2	221.2	211.2	201.2
4	1969	247.4	217.4	207.4	197.4
	1970	243.6	213.6	203.6	193.6
	1971	239.8	209.8	199.8	189.8
5	1972	236.0	206.0	196.0	186.0
	1973	232.2	202.2	192.2	182.2
	1974	228.4	198.4	188.4	178.4
6	1975	224.6	194.6	184.6	174.6
	1976	220.8	190.8	180.8	170.8
	1977	217.0	187.0	177.0	167.0
7	1978	213.2	183.2	173.2	163.2
	1979	209.4	179.4	169.4	159.4
	1980	205.6	175.6	165.6	155.6

Notes

Col. 2 shows the total estimated cost of costs of planned airport development as indicated in the 4 national surveys conducted by the Airport Planning Council, American Association of Airport Executives, and Federal Aviation Administration. Col. 3 indicates the estimated cost of those same costs at the time of the survey were they to be financed by the Federal Airport Construction Program.

Col. 4 shows the total estimated cost of planned projects that could have been matched by the Federal Government and Federal funds were available.

Col. 5 indicates the actual amount of Federal funds received by the sponsors through reimbursement of project expenditures from year to year—Col. 6, the amounts actually allocated by the Federal Aviation Agency.

A comparison of the figures in Columns 5 and 6 indicates the consistently low level of Federal aid in relation to the indicated need.

With the exception of 1964, the subsequent project requests have been significantly greater than the survey estimates of planned development, which confirms the opinion that the estimated development costs of Survey No. 4, made in 1965 for the four years 1966 through 1969, are conservative.

FEDERAL-STATE-LOCAL FINANCIAL PARTICIPATION IN AIRPORT DEVELOPMENT

With respect to funding, the 1965 National Airport Survey showed that the Federal Government provided \$391.1 million, or about 24%, of the total cost of all public airport development reported during the five-year period, 1960 through 1964.

	Amount	Percent
Local funds.....	\$851,786,000	66
State funds.....	99,200,000	8
Federal funds.....	301,114,000	24
Total.....	1,251,102,000	100

This indicates that during the period 1960 through 1964, for every dollar of Federal money, there were three dollars from local and state sources used to improve the nation's airport system.

The \$1.25 billion for airport development included \$360 million for terminal building construction or improvement. The latter were not eligible for Federal financial assistance and were paid for 100% by local governments, assisted in some cases by states. To arrive at the cost of airport improvement projects that were eligible for Federal funds on a matching basis, the total spent on terminal buildings was deducted:

Total completed airport development.....	\$1,251,102,000
Less cost of terminal building construction.....	359,822,000
Total eligible under Federal aid airport program.....	891,280,000

The survey coordinators recognize that there were other projects in addition to terminal buildings which were not eligible for financial assistance under the Federal Airports Act; for example, cargo buildings, auto parking lots, etc. However, the cost of these other projects on a national basis represented such a small portion of the non-FAAP eligible airport improvement that it was judged reasonably accurate to consider all airport projects except those involving terminals and related items as projects for which federal aid could be requested.

On the basis of \$891.3 million total airport development as eligible to be funded 50/50% by federal and local governments, the survey found that in actual performance it was a 67/33% split:

*Financing of FAAP-eligible airport development*

[In millions]

	Amount	Percent
Local funds.....	\$492	56
State funds.....	98	11
Federal funds.....	301	33

The above percentages are derived from the national tabulation. On a case-to-case study, at some airports Federal assistance amounted to approximately 50% of the total cost of eligible project development; at others, the Federal contributions do not exceed 5%.

Inquiries regarding the survey or the national summary may be directed to the National Survey Coordinator which, for this particular survey, was: Mr. F. R. Hoyt, Executive Director, American Association of Airport Executives, P.O. Box 767, Wilmington, Delaware 19899.

NATIONAL AIRPORT SURVEY, 1966-69

APPENDIX

Survey Questionnaire.

State Summary Form—Past Airport Development.

State Summary Form—Future Airport Development.

Number of Airports Completing Questionnaires.

Cost of Planned Airport Development, 1966 through 1969, by States, related to the Federal-Aid-to-Airport Program.

Cost of Past Airport Development, 1960 through 1964; Cost of Planned Airport Development, 1966 through 1969; Sponsors Funds Available; and Additional Funds Needed.

## FEDERAL AIRPORT ACT EXTENSION

Appendix - Page 1

## SURVEY OF AIRPORT DEVELOPMENT COSTS

1966 - 1969

Conducted by: AOC - AAAE - NASAO

NAME OF AIRPORT \_\_\_\_\_

LOCATION \_\_\_\_\_

(city)

(county)

(state)

1. Is this airport existing \_\_\_\_\_ or proposed \_\_\_\_\_?

2. Actual, or estimated, number of landings and takeoffs during 1966 by:

Air carrier \_\_\_\_\_

Air taxi \_\_\_\_\_

Military \_\_\_\_\_

Business aircraft \_\_\_\_\_

Other General Aviation \_\_\_\_\_

3. During the last five years (1960 thru 1966) what was the total cost\*

of all airport development projects \_\_\_\_\_ \$ \_\_\_\_\_

a. Of this amount: how much was contributed by Federal Gov't. \_\_\_\_\_

b. Of this amount: how much was contributed by the State \_\_\_\_\_

c. Of this amount: how much was spent for terminal bldg. construction \_\_\_\_\_

(\* Include all capital improvements; do not include costs of operating and maintaining the airport or purchasing field equipment, for example, etc.)

## 4. FUNDS NEEDED TO BUILD OR IMPROVE THE AIRPORT DURING THE NEXT FOUR YEARS:

	1966	1967	1968	1969	TOTAL
a. COSTS OF ACQUIRING LAND (See Note 1)					
b. COST OF DEVELOPING LANDING AREA (Note 2)					
c. COST FOR NEW RUNWAY & TAXIWAY LIGHTING					
d. COST OF NEW SERVICE BUILDINGS (Note 3)					
SUB-TOTAL (Items a thru d)					
e. COST FOR OTHER IMPROVEMENTS (Note 4)					
TOTALS (Items a thru e)					†

† TOTAL adding across the columns should equal TOTAL adding down.

Note 1: Include all costs to acquire land needed for: airport expansion, landing aids, approach protection, noise buffer zones; also costs of air rights or land easements.

Note 2: List all costs, including site preparation (clearing, draining, filling, grading, etc.), sodding, paving or resurfacing, to build or improve landing strips, runways, taxiways, loading and parking aprons.

Note 3: List all costs for buildings needed to house field maintenance equipment, and/or crash fire-fighting vehicles.

Note 4: Include all improvements not eligible for Federal aid, for example: terminal bldgs., cargo bldgs., hangars, noise parking areas, access roads, etc.

## 5. FUNDS AVAILABLE OR ANTICIPATED FROM ALL SOURCES, EXCEPT FEDERAL AND STATE, TO ACCOMPLISH THE ABOVE DEVELOPMENT PROJECTS IN THE NEXT FOUR YEARS:

	1966	1967	1968	1969	TOTAL
Funds on Hand or Budgeted					
Future Anticipated Funds					
TOTAL					

6. How does the airport and air travel improve the economy of your area?

(Please use the reverse side of this form—blue copy only—to answer in narrative form; give specific examples of how the airport has helped the local economy)

SUBMITTED BY \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_



## FEDERAL AIRPORT ACT EXTENSION

Appendix - Page 3

## NATIONAL AIRPORT SUMMARY

### State Summary — By Airports

# 1

五、

[illegible]

*Total number of airports, and airports participating in survey*

	Publicly owned airports		
	Total number per FAA figures as of January 1965	Number of airports receiving questionnaires <sup>1</sup>	Number of airports completing questionnaires
<b>State:</b>			
Alabama.....	73	64	16
Alaska.....	400	<sup>2</sup> 37	37
Arizona.....	78	37	13
Arkansas.....	56	<sup>2</sup> 14	14
California.....	253	195	77
Colorado.....	61	50	19
Connecticut.....	14	10	9
Delaware.....	2	2	2
Florida.....	116	97	42
Georgia.....	77	96	44
Hawaii.....	21	<sup>1</sup> 8	8
Idaho.....	118	30	6
Illinois.....	66	<sup>2</sup> 64	64
Indiana.....	49	76	43
Iowa.....	72	100	45
Kansas.....	107	<sup>2</sup> 6	6
Kentucky.....	42	<sup>1</sup> 56	56
Louisiana.....	57	<sup>2</sup> 10	10
Maine.....	46	50	23
Maryland.....	17	<sup>2</sup> 13	13
Massachusetts.....	37	<sup>2</sup> 40	40
Michigan.....	114	<sup>2</sup> 71	71
Minnesota.....	111	<sup>2</sup> 141	141
Mississippi.....	63	<sup>2</sup> 31	31
Missouri.....	70	91	12
Montana.....	111	<sup>2</sup> 78	78
Nebraska.....	85	80	49
Nevada.....	36	<sup>2</sup> 5	5
New Hampshire.....	13	<sup>1</sup> 12	12
New Jersey.....	19	<sup>2</sup> 3	3
New Mexico.....	52	50	28
New York.....	59	69	44
North Carolina.....	46	<sup>2</sup> 27	27
North Dakota.....	66	<sup>2</sup> 60	60
Ohio.....	54	57	23
Oklahoma.....	92	125	25
Oregon.....	78	36	25
Pennsylvania.....	64	65	57
Rhode Island.....	7	<sup>2</sup> 5	5
South Carolina.....	43	<sup>2</sup> 26	26
South Dakota.....	58	<sup>2</sup> 51	51
Tennessee.....	53	<sup>2</sup> 81	81
Texas.....	212	256	75
Utah.....	50	<sup>2</sup> 58	58
Vermont.....	12	<sup>2</sup> 22	22
Virginia.....	39	80	64
Washington.....	110	<sup>2</sup> 12	12
West Virginia.....	15	<sup>2</sup> 24	24
Wisconsin.....	84	<sup>2</sup> 62	62
Wyoming.....	42	<sup>2</sup> 27	27
Puerto Rico.....	14	<sup>2</sup> 14	14
<b>Total.....</b>	<b>3, 636</b>	<b>2, 774</b>	<b>1, 790</b>

<sup>1</sup> Includes 271 new (proposed) airports.<sup>2</sup> Number of questionnaires sent to airports was not reported or questionnaires were not distributed to airports but completed by State or National survey coordinator.

## FEDERAL AIRPORT ACT EXTENSION

*Cost of planned airport development, 1966, 1967, 1968, 1969*

[All dollar figures are in thousands of dollars]

States	Publicly owned airports	Airports reporting in survey	Total cost of planned airport development	Federal-aid to airports program		
				Total cost of FAAP eligible items	Sponsors funds available	Additional funds needed
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama.....	73	16	\$13,621	\$10,782	\$4,200	\$6,513
Alaska.....	400	37	43,659	39,674	15,014	24,560
Arizona.....	78	13	19,810	16,118	5,947	10,271
Arkansas.....	56	14	9,000	7,188	2,651	4,587
California.....	253	77	141,441	90,137	75,812	20,325
Colorado.....	61	19	23,566	5,875	2,530	3,345
Connecticut.....	14	9	36,389	22,856	10,115	12,741
Delaware.....	2	2	2,985	2,710	815	1,865
Florida.....	116	42	82,847	40,532	16,392	24,440
Georgia.....	77	44	32,198	17,565	5,772	11,793
Hawaii.....	21	8	25,654	16,446	10,116	6,330
Idaho.....	118	6	5,803	5,093	1,394	3,709
Illinois.....	68	64	252,057	148,495	70,782	77,713
Indiana.....	49	43	28,986	20,320	9,891	10,490
Iowa.....	72	45	18,003	13,377	4,835	8,542
Kansas.....	107	6	5,658	5,030	2,500	2,431
Kentucky.....	42	56	38,991	27,981	7,192	20,739
Louisiana.....	57	10	29,759	25,351	14,034	11,317
Maine.....	46	23	6,439	5,416	2,994	2,422
Maryland.....	17	13	26,378	15,336	4,791	10,805
Massachusetts.....	37	40	78,423	47,629	25,014	12,615
Michigan.....	114	71	62,076	50,404	25,305	25,099
Minnesota.....	111	141	27,099	12,141	4,566	7,575
Mississippi.....	63	31	13,744	12,407	5,411	6,986
Missouri.....	70	12	58,089	29,648	13,187	16,461
Montana.....	111	78	10,974	6,936	1,967	4,949
Nebraska.....	85	49	15,107	12,207	4,224	7,953
Nevada.....	36	5	12,032	10,662	3,577	7,065
New Hampshire.....	13	12	3,842	3,087	1,180	1,927
New Jersey.....	19	3	117,019	18,819	10,509	8,310
New Mexico.....	52	28	5,571	3,887	1,616	2,271
New York.....	59	44	149,587	68,775	11,670	57,105
North Carolina.....	46	27	20,291	16,182	4,523	11,659
North Dakota.....	66	60	5,002	3,662	1,933	1,729
Ohio.....	54	23	27,155	17,806	8,475	9,330
Oklahoma.....	92	25	7,319	5,241	2,743	2,496
Oregon.....	78	25	11,421	8,994	3,926	4,798
Pennsylvania.....	64	57	102,122	52,095	23,295	28,800
Rhode Island.....	7	5	4,678	4,130	1,452	2,678
South Carolina.....	43	26	2,445	2,445	1,302	1,143
South Dakota.....	58	51	9,246	7,208	3,606	3,602
Tennessee.....	53	81	62,316	41,520	23,612	17,908
Texas.....	212	75	140,180	83,139	47,461	35,678
Utah.....	50	58	6,361	5,052	1,841	3,211
Vermont.....	12	22	12,210	10,484	3,211	7,273
Virginia.....	39	64	28,252	22,460	10,367	12,008
Washington.....	110	12	27,843	15,823	7,392	8,431
West Virginia.....	15	24	39,892	38,594	17,991	20,608
Wisconsin.....	84	62	25,128	21,295	8,473	12,822
Wyoming.....	42	27	4,360	4,057	1,668	2,399
Total, States.....	3,622	1,785	1,932,918	1,178,920	559,252	619,666
Puerto Rico.....	14	14	22,891	17,720	10,329	7,391
Total.....	3,636	1,799	1,955,809	1,196,640	569,581	1,627,059

## NOTES

Column (1)—Federal Aviation Agency figures for U.S. publicly owned landing facilities (including sea-plane bases and heliports) as of January 1, 1965.

Column (2)—Publicly owned airports reporting in this survey either directly, or indirectly through State aviation departments. Included 271 proposed airports which accounts for the fact that for some States the number of airports reporting exceeded number of airports as shown in column (1).

Column (3)—Cost of planned development including eligible Federal-aid-to-airport projects, and ineligible projects such as terminal buildings, cargo facilities, hangars, etc.

Column (4)—Cost of planned airport improvements that are eligible for Federal airport aid on a matching basis.

Column (5)—Total of State and local funds that are anticipated to be available to meet the costs of development per column (4).

Column (6)—Additional funds needed to meet the cost of development per column (4).

<sup>1</sup>\$627,059,000 in additional funds needed is for the 4-year period, or approximately \$157 million annually.



*Cost of past airport development, 1960-64; cost of planned airport development, 1966-69*  
 [Thousands of dollars]

State	Cost of past airport development 1960 through 1964				Cost of planned airport development, 1966 through 1969							Sponsors funds estimated to be available 1966 through 1969			Addi- tional funds needed
	Total	Contribution			Land acqui- sition	Land- ing area	Light- ing	Serv- ices build- ings	Total FAAP eligible	Termi- nal build- ings and other	Total	Total			
		Fed- eral	State	Local								Local	State		
Alabama.....	12,881	4,268	754	7,859	4,784	4,594	892	511	10,782	2,839	13,621	7,108	(1)	7,108	6,613
Alaska.....	23,239	13,387	9,046	9,061	1,846	35,445	1,227	1,054	39,574	4,085	43,559	1,860	17,230	19,090	24,560
Arizona.....	13,239	4,033	1,065	9,061	4,551	9,872	1,260	405	30,574	3,692	19,810	9,189	17,350	9,539	10,271
Arkansas.....	3,061	1,209	422	70,014	1,801	4,150	1,531	426	7,188	1,812	9,000	4,403	4,403	4,403	4,403
California.....	101,805	31,370	422	21,036	54,565	36,080	3,827	1,965	90,137	45,304	141,441	117,116	4,000	121,116	20,325
Colorado.....	31,059	10,023	2,063	4,472	5,105	13,038	1,573	1,070	8,575	17,691	36,559	20,221	12,168	28,648	12,741
Connecticut.....	7,689	2,398	.....	776	9,393	2,200	1,891	1,587	7,719	13,575	9,985	1,000	1,000	1,000	1,000
Delaware.....	27,478	10,016	608	17,462	8,737	7,181	3,257	1,257	40,832	42,015	82,847	58,407	19,405	68,407	24,440
Florida.....	45,437	16,269	608	28,560	8,737	7,181	740	907	17,565	14,533	32,198	19,405	10,324	20,405	11,793
Georgia.....	89,913	4,898	35,065	921	1,655	3,333	5,233	770	16,446	9,208	25,654	16,406	1,000	16,406	8,300
Hawaii.....	191,360	15,438	12,126	163,963	23,061	109,423	9,141	8,840	148,466	103,562	262,057	167,619	16,725	174,344	77,713
Idaho.....	11,709	4,963	.....	6,806	3,883	14,001	757	1,079	20,320	8,016	28,396	18,497	400	18,497	10,342
Illinois.....	7,857	3,203	223	4,401	1,343	10,563	639	1,594	13,377	4,626	18,003	9,061	400	9,461	8,482
Iowa.....	2,520	672	.....	1,848	344	4,201	265	220	5,039	638	5,658	3,227	.....	3,227	2,431
Kansas.....	17,404	5,992	1,921	9,491	5,135	20,214	1,445	780	27,931	11,000	38,931	17,073	1,200	18,273	20,739
Kentucky.....	24,660	9,067	110	15,453	1,986	22,101	1,123	101	25,351	4,098	29,759	16,441	2,000	18,442	11,317
Louisiana.....	1,571	700	431	440	4,248	4,294	1,670	204	3,351	1,013	6,430	1,776	1,000	4,007	2,422
Maine.....	7,714	1,853	50	5,781	673	13,617	926	131	15,338	1,042	26,378	14,773	1,000	15,773	10,005
Maryland.....	45,589	7,037	1,762	36,790	3,878	38,865	4,671	215	47,629	30,794	78,423	64,608	1,200	65,808	12,615
Massachusetts.....	26,742	11,431	5,591	9,220	9,069	34,174	5,424	1,737	50,404	11,672	62,076	18,547	1,000	36,977	25,069
Michigan.....	32,084	4,098	2,066	22,320	1,183	9,526	1,183	1,260	13,141	14,958	27,099	16,774	2,750	18,524	7,575
Minnesota.....	13,908	4,880	7	14,970	9,091	1,750	1,194	871	20,468	1,337	21,805	16,774	1,000	6,748	6,906
Mississippi.....	21,876	6,906	.....	7	5,487	18,675	1,872	3,419	29,448	28,441	58,089	40,428	1,200	41,628	16,401
Missouri.....	8,242	3,913	1,030	3,299	5,82	5,102	877	374	6,996	4,039	10,973	3,743	2,253	6,026	4,949
Montana.....	13,103	4,913	1,152	7,031	3,448	9,594	737	617	12,267	2,901	15,168	5,745	1,380	7,125	7,953
Nebraska.....	9,489	3,749	.....	5,740	5,215	4,785	285	377	10,062	1,309	12,031	4,946	(1)	4,946	4,946
Nevada.....	3,899	1,597	666	1,736	3,374	2,511	.....	3,057	755	3,842	1,115	800	1,915	1,915	1,915
New Hampshire.....	10,829	1,828	.....	9,001	709	14,764	721	1,634	18,819	98,200	117,019	108,709	270	108,709	8,310
New Jersey.....	4,824	993	39	3,792	2,901	2,803	672	1,122	3,887	1,083	6,570	3,029	270	3,299	2,271
New Mexico.....	229,623	16,654	.....	212,969	20,305	42,572	2,355	3,482	98,775	80,762	149,537	92,432	.....	92,432	67,105
New York.....	9,881	3,998	.....	5,883	2,330	12,042	1,474	3,333	16,182	4,109	20,291	8,402	.....	8,402	11,659
North Carolina.....	5,874	2,162	78	3,634	3,737	2,460	1,307	1,065	3,052	1,340	5,002	3,096	177	3,273	1,739
North Dakota.....	20,406	7,747	50	12,611	5,395	9,523	1,407	1,476	17,895	9,350	27,165	12,825	5,000	17,825	9,330

See footnotes at end of table.

## FEDERAL AIRPORT ACT EXTENSION

*Cost of past airport development, 1960-64; cost of planned airport development, 1968-69* (continued)  
[Thousands of dollars]

State	Cost of past airport development 1960 through 1964				Cost of planned airport development, 1968 through 1969							Monies funds estimated to be available 1968 through 1969		Addi- tional funds needed	
	Total	Contribution			Land acqui- sition	Land- ing area	Light- ing	Serv- ice build- ings	Total F.A.A. eligible	Termi- nal build- ings and other	Total	Local	State		Total
		Fed- eral	State	Local											
Oklahoma.....	11,891	4,887	61	7,433	1,351	2,355	1,060	475	6,241	2,078	7,319	6,091	1,360	7,451	4,798
Oregon.....	10,257	5,057	145	5,055	2,020	5,104	1,162	318	8,694	2,737	11,431	6,045	6,045	6,045	4,798
Pennsylvania.....	47,812	14,688	4,952	28,175	6,802	26,470	6,653	2,274	22,038	50,077	102,135	67,822	2,000	78,829	23,537
Rhode Island.....	1,718	831	867	440	3,037	226	230	416	4,180	646	4,826	741	2,000	1,826	3,078
South Carolina.....	8,661	2,419	950	5,292	180	2,220	45	307	2,443	1,086	3,529	601	1,000	1,528	1,728
South Dakota.....	3,101	2,050	98	903	497	6,026	377	1,264	7,208	2,446	9,654	4,084	1,000	5,084	1,000
Tennessee.....	44,940	15,113	4,894	28,939	7,374	29,483	3,409	1,562	23,180	20,708	43,888	108,812	1,000	109,812	31,368
Texas.....	36,379	3,645	253	28,480	21,728	56,082	3,417	1,562	6,182	87,041	144,180	108,812	1,000	109,812	31,368
Utah.....	7,820	3,376	424	4,019	350	4,081	319	354	6,182	1,308	7,490	108,812	1,000	109,812	31,368
Vermont.....	1,585	692	440	1,308	1,308	7,708	1,253	370	10,464	4,792	15,256	1,406	3,082	4,488	3,111
Virginia.....	13,881	4,879	1,548	7,454	4,603	16,365	1,498	608	22,460	8,792	31,252	11,160	6,080	17,240	19,128
Washington.....	16,606	4,004	.....	12,602	4,403	9,391	1,606	30	15,408	12,121	27,529	16,418	.....	16,418	10,188
West Virginia.....	6,287	2,982	.....	3,355	6,423	24,772	2,311	1,167	38,584	30,402	68,986	10,380	(1)	10,380	4,641
Wisconsin.....	(2)	(2)	(2)	3,359	16,526	1,818	1,04	21,304	21,304	2,126	23,430	12,800	(1)	12,800	10,188
Wyoming.....	2,609	1,254	311	1,044	3,903	2,730	321	43	4,107	812	4,919	1,760	200	1,960	1,760
Total, States.....	1,244,201	288,848	93,555	861,798	248,795	800,010	88,182	44,000	1,178,920	758,948	1,937,868	1,170,177	187,073	1,357,250	619,088
Puerto Rico.....	6,901	2,256	4,645	(1)	6,964	10,407	200	129	17,720	8,171	25,891	(1)	15,400	15,400	7,491
Total.....	1,251,102	301,114	98,200	861,798	255,759	810,417	88,382	44,129	1,196,640	767,119	1,963,759	1,170,177	192,473	1,362,650	627,579

<sup>1</sup> Information on anticipated State aid, if any, was not provided.

<sup>2</sup> Included in local sponsors funds in some State and Appalachia program aid.

<sup>3</sup> Details not provided.

<sup>4</sup> Sponsors funds are those of the Puerto Rico Ports Authority, an agency of the Commonwealth of Puerto Rico.

Note: Due rounding of figures to nearest thousands, there are minor differences in addition across and down the columns.

The CHAIRMAN. If you would leave them up here, perhaps some of the members might want to look at them.

Mr. H. C. Heldenfels, Associated General Contractors.

Mr. PICKLE. Mr. Chairman, if I may be permitted, I didn't know that Mr. Heldenfels was going to appear this morning. He is a very good friend of mine, he and his brother. They are one of the outstanding contracting firms in Texas. They not only have State but a national recognition in this field. The members of his organization are leaders in the Texas AGC organization and they are wonderful citizens of our State, I personally welcome Mr. Heldenfels to our committee.

**STATEMENT OF H. C. HELDENFELS, HELDENFELS BROS., ASSOCIATED GENERAL CONTRACTORS, CORPUS CHRISTI, TEX.**

Mr. HELDENFELS. Thank you, sir.

The CHAIRMAN. With that fine introduction, I am sure we will be interested in your comments. If you have a statement and can put it in the record and summarize it, we would appreciate it.

Mr. HELDENFELS. Yes. It is a very brief statement. It will be entered in.

Mr. Chairman and members of the committee, my name is H. C. Heldenfels. I am a partner of Heldenfels Bros., Corpus Christi, Tex. Our firm engages in airport, highway, and heavy construction. I am appearing before you today in behalf of the Associated General Contractors of America.

Representing more than 8,000 general contractors in all 50 States and Puerto Rico, the Associated General Contractors is happy to have the opportunity to make a statement concerning this legislation now before the House Interstate and Foreign Commerce Committee.

Many of our contractor members perform airport construction under the Federal Airport Act and know firsthand the need for a continuing and progressive program for airport improvement and new construction.

We know of this committee's past support of the Federal aid to airports program (FAAP) and its understanding of the needs and benefits to be derived from its continuation. You are aware of the recently conducted survey carried out by the Airport Operators Council International, the American Association of Airport Executives, the National Association of State Aviation Officials, and other associations.

This survey attests to the need for an expenditure of \$2 billion for airport facilities by 1969. Consequently, for the sake of brevity, we have limited our comments to what we know best—construction and its costs.

To the extent H.R. 13665 goes, we support the legislation before you. But we feel as do other groups which have testified on this legislation, that it is deficient in three respects. These are (a) \$75 million per year is inadequate; (b) this program should be continued for a period longer than 3 years; and (c) more emphasis should be placed on the development of general aviation airports.

Recognizing the need for more and better airport facilities. AGC supports at least a 5-year extension of the Federal aid to airports program (FAAP) authorizing an appropriation of no less than \$125 million annually.

1. The first of these is the fact that the United States has a large and growing population of people who are not citizens of the United States. This is a result of the large number of immigrants who have come to the United States in recent years, and the fact that many of these immigrants are not naturalized citizens.

The above information was obtained from a review of the records of the Bureau of Prisons, Department of Justice, Washington, D.C., and the records of the Federal Bureau of Investigation, Department of Justice, Washington, D.C.

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~

~~SECRET~~

1940

[illegible]

**Don't miss Mr. Tanager!**

Mr. J. W. Smith, Jr.

[illegible]

Mr. MORGAN. We do and we think that even would be the figure under the present terms of the program, but we think it is not the result of generosity.

Mr. DRAKE. Do you have any suggestion as to what new taxes should be levied on the American people to raise this extra \$25 million?

Mr. MURKIN. We have been attempting to get a national policy established on user charges which I think is the point of your direct.

**Mr. DEWINE.** As I say, you are probably not the proper person to be asked this question, but it is of increasing concern to me when people come before the Congress of the United States, and I am going to support this bill, make no mistake about it; but, for instance, the mayor of the city of New York, who belongs to my party, came down before somebody here in Washington and suggested that it is the duty of the Federal Government to provide the city of New York with \$50 billion for the next 10-year period because they could not raise it on a local level.

Well, where in the world do they think the Federal money comes from? It must first be extracted from the taxpayer. On this program the previous witness, I believe, testified that this could not be handled by the local communities, so, therefore, it is a Federal responsibility.

New York itself has the highest income per capita of any State in the Union and yet they are coming and saying they can't raise the money: it has to come from the Federal Government. Where are you going to get it? From Mississippi or Alabama? We have to answer these questions. Do you have any suggestions?

Mr. MONROE. I am afraid I don't have a suggestion directly. The only thing I can say is that we look upon airports as a sort of a machine tool. It is something like a drill. Nobody wants to buy a drill. What he wants is a hole. Nobody wants an airport. What he wants is what an airport will do.

And essentially this is what it gets to and we think that the airport is a business and economic generator. It creates business by its establish-

ment. It enhances commerce, and business, and industry, and all of these things, draws these into communities and enhances their tax base from which you draw the money to turn around and retire airport bonding or something of this sort.

Mr. DEVINE. On a local level?

Mr. MONROE. On a local level. Actually, as a matter of fact, so far as to produce an operating airport the Federal Government only contributes at the maximum someplace in the neighborhood of about 30, 31 percent, most often generally less.

Mr. DEVINE. But you have no recommendations on where we will raise the additional funds you suggest be included?

Mr. MONROE. I think I have to agree with you that this is essentially a local proposition, that is, the major part of it. Now, what you are doing when you advanced Federal money on this is to provide seed money to encourage a local community to come in and match it with 3, 4, or 5 to 1 to produce an operating enterprise, and this generates more business.

Mr. DEVINE. Thank you.

The CHAIRMAN. Any questions over here?

Mr. WILLIAMS. No, Mr. Chairman.

I would simply like to say to Mr. Monroe that I fully agree with the general position taken by the AOPA, not necessarily with respect to the amount of money involved in this, but with respect to the general policies under which the airport program is being administered.

It is my feeling that greater emphasis should be placed on the development of so-called general aviation airports which serve the major airports. General aviation is growing by leaps and bounds in this country and the more airports that we put in the hinterlands to take care of this general aviation, the less congestion there will be around the major terminals.

That is all I have, Mr. Chairman.

The CHAIRMAN. Any further questions?

Mr. MACKAY. Mr. Chairman, I thank the witness for what he had to say. We have the fourth busiest airport for private owners in the country, the Peachtree-De Kalb Airport, in my district in Atlanta. I have certainly heard from aircraft owners in support of this bill. I am sure the grassroots support what you had to say here today.

Thank you.

Mr. MONROE. Thank you and thank Mr. Williams.

(The statement follows:)

#### STATEMENT OF ROBERT E. MONROE, AIRCRAFT OWNERS AND PILOTS ASSOCIATION

Mr. Chairman, my name is Robert E. Monroe. I am Assistant Director, Office of Policy Coordination, Aircraft Owners and Pilots Association, commonly referred to as AOPA. AOPA is a service association composed of over 132,000 members who own or fly aircraft for personal, business or pleasure purposes. A summary of the nature of our organization is contained in Annex A to this statement.

We appreciate the opportunity to present our views on S. 3096.

Our type of flying encompasses all civil flying other than that done by the airlines and is known as "general aviation". It is the fastest growing segment of the aviation community. The active fleet of general aviation aircraft now numbers approximately 100,000 planes and our airplane manufacturers are turning out new planes at a rate of more than 15,000 a year. These aircraft are flown by more than 400,000 pilots for personal transportation and a large variety of business reasons. By comparison, the total airline fleet numbers

As mentioned earlier, the contractor knows first hand the need for a continuing and progressive program for airport improvement and new construction. It is our opinion that an orderly, continuing program develops fully the economies inherent in the construction industry. Our concern that the most be attained for the construction dollar is foremost in mind.

The business which must "gear up" its operations for a specific project only to disband these forces upon its completion is not an economical one.

To obtain effective planning and economical construction both the local governing body—the sponsor—and the contractor must be able to make long-range plans. The further in advance a contractor can assess his volume of work, distribution of equipment, and utilization of personnel, the more economically he can operate, with resulting lower costs to himself and lower prices for the owner.

We respectfully point out, however, that those airports which are now capable of handling commercial jets, or for which such service is contemplated, come much closer to being self-sufficient than the many small civil airports throughout the country, and we sincerely hope that this committee will consider this situation most seriously.

There is no doubt that more funds are needed, and will be expended for airport improvement and new construction, now and in the future. Every day we put off the expenditure of funds for facilities which we need today we find their cost has increased.

Construction costs continue to rise. Inflationary increases in hourly wage rates, in almost all cases far above the President's guidelines, are making it impossible for the contractors to continue to hold the line on their bid prices as they have in the past.

Such wage increases have brought us to the point in our industry where, by 1969, operating engineers in Chicago will receive \$6 an hour compared to the \$4.60 an hour they received in 1965; equipment operators in New Jersey will get \$8.55 an hour, and the same is true from coast to coast, so that the average wages in the building trades will be between \$5 and \$7 an hour by 1969.

This has a very direct affect on the cost of airport construction.

In summation, the AGC recommends the approval of H.R. 13665, with amendments: (a) increasing the annual authorization of funds to no less than \$125 million; (b) extending the Federal Airport Act for 5 years rather than 3 years; and (c) emphasizing the needed facilities for general aviation.

We would like also to point out to the committee the proved advantages of the contract method of construction. Economy, centralized responsibility, adequate advance planning, and adherence to our free enterprise system are some of the important reasons why the contract method is superior to other methods of construction.

Today's high degree of competition among contractors, and the more than adequate capacity of the contracting industry to perform all proposed construction work, assure the public and the Congress of a sound investment in the proposed extension of the Federal Airport Act.

I thank you for being able to appear before you.

The CHAIRMAN. Thank you very kindly, Mr. Heldenfels. Mr. Friedel, any questions?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Any questions, Mr. Younger?

Mr. YOUNGER. No, sir.

The CHAIRMAN. Any questions, Mr. Pickle?

Mr. PICKLE. Mr. Chairman, I would just like to say to Mr. Heldenfels in connection with the three recommendations he makes that I imagine the committee agrees in general with these particular points. We are faced with a national and international problem of high costs at every level and the \$75 million may be all that could be anticipated, but the point I want to make to you in line with the three recommendations you make is that this ties in together with the overall approach that we must have for the solution of congestion, and that, of course, includes construction of the airfield.

Though the bill may not be as comprehensive as you would want at this particular immediate time, this committee is cognizant of the overall problem and will be working toward that solution.

The CHAIRMAN. Any questions? Any further questions? If not, I wish to thank you, Mr. Heldenfels, for appearing before the committee and giving us the benefit of your views and they will be in the record. I might say to you I don't know whether Mr. Pickle is your Congressman or not, but he is always on the job, particularly when he sees a fellow Texan around, and he is doing a good job.

Mr. HELDENFELS. You are fortunate to have him.

The CHAIRMAN. Yes, sir. Our next witness will be Mr. Robert Monroe, assistant director of the office of policy coordination, Aircraft Owners & Pilots Association. Mr. Monroe, I notice your statement is rather long. Would you put this in the record and summarize it?

**STATEMENT OF ROBERT MONROE, ASSISTANT DIRECTOR, OFFICE OF POLICY COORDINATION, AIRCRAFT OWNERS & PILOTS ASSOCIATION**

Mr. MONROE. Thank you, Mr. Chairman. I will be happy to summarize it.

To identify myself, I am Robert E. Monroe of the Aircraft Owners & Pilots Association. The nub of our position is contained on page 5.

In summary, we favor the legislation as written. We would urge, if possible, that it be increased to \$100 million. Second, we urge that the report on the bill contain a directive to the administrator that he complete the national system of airports before granting additional projects for improvements to airports which have already received aid.

And three, we urge that the report on the bill contain a directive to the administrator that he shall not withhold from grants any funds which may have been appropriated except as may be required by the allocation provisions of the law.

Now, the basis for that is contained in a few paragraphs on page 4. These review the history of the Airport Aid Act and I would like to point these to you because we have had this program for 20 years.

The first national airport plan in 1947 listed 4,401 airports, 2,550 of which were proposed new ones, and the estimated cost of development was \$985.8 million. Twenty years later the national airport plan still has 4,106 locations, 887 of which are new airports, and the cost of development is estimated at \$13 billion.

slightly over 2,000 aircraft. General aviation is playing an increasingly important role in our national economy through the flexibility and utility that it offers in a vast number of industrial, agricultural and other business applications. It is a modern day tool that serves farmers, foresters, salesmen, engineers, executives, scientists, doctors and a host of other occupations in addition to its lesser use for personal transportation for pleasure and recreation.

All flights normally begin and end at an airport. Thus, an adequate system of airports is the necessary ingredient for continued growth and health of civil aviation, which, in turn, forms an important part of our economy and our national transportation capability. In time of emergency, these airports also serve rescue, military and other vital government operations.

The most desirable airport sites are those located in close proximity to the community that they serve. Unfortunately, such land also is very desirable for real estate development, shopping centers and the like, making it very susceptible to conversion to these uses unless it is publicly owned. The sad fact is that of the 9,500 civil airports that serve the 50 states, 5,906 of them are privately owned and only 3,570 are owned by cities, counties, states or other government bodies. It has been recognized by the FAA that many privately owned airports are providing required facilities for a community in the absence of a publicly owned airport.

Under the terms of the Federal Airport Act, recipients of Federal aid execute a Sponsor's Assurance Agreement which provides for continuation of the airport for 20 years. This assurance is entirely lacking with respect to private airports and they may be converted to other use at any time, thus leaving the community without air transportation.

Since inception of Federal aid to airports in 1947, approximately 2,000 airports have received Federal assistance. The current National Airport Plan lists 3,855 airports, of which 801 are categorized as air carrier and 3,054 as general aviation. In addition, 119 air carrier and 38 general aviation heliports are listed, plus 11 general aviation seaplane facilities and 83 such facilities for air carrier use in Alaska. A question logically may be asked as to why the large number of general aviation airports in relation to those in the air carrier category. This, of course, is due to the economics of air carrier operation whereby they directly serve only a small portion of the more than 18,000 incorporated communities that make up the United States. General aviation serves any and all locations and often provides the missing link between the airline airport and the smaller community some distance away. Thus, we find that in many communities, the only air link to our national transportation system is that provided by general aviation.

There is a great need to preserve and bring into the publicly owned airport system many of the airports now privately owned. Suitable airport sites are becoming increasingly hard to obtain and land values are making acquisition of new sites economically impracticable.

The level of Federal aid to airports has remained far below the requirement since inception, despite repeated recommendations from the users and state and local public officials that it be increased. Also, the Administration has made determined efforts on several occasions to reduce the funds available for Federal aid to airports. We feel these efforts were based on inadequate information regarding the importance of this program to the nation's economy.

It is quite obvious that \$75,000,000 today will not buy what it would last year or five years ago. The cost of materials, labor and engineering services have all increased materially since the starting of this program. Further, the expansion of urban areas has increased land values many times over the costs encountered some years ago. Thus, we conclude that the authorization of a \$75,000,000 annual level should be increased to compensate for increased costs and to meet the demands of our rapidly expanding aviation industry. (Likewise, the funds appropriated should equal the authorization—not be less, as recommended by the Administration.) In particular, greater attention and more money needs to be focused on the needs of general aviation, which is expanding so much faster than any other form of transportation. We recommend that the total annual authorization in S. 3096 be increased to \$100,000,000. The increase should be used primarily for development of general aviation airports.

In connection with our recommended increase of funds for general aviation airports, we feel that a statement of policy is needed whereby the Committee clearly indicates to the FAA Administrator that in administration of the Act, he should not emphasize the development of air carrier airports in preference



to general aviation airports. We think that this is clear in the Act, but we have had some difficulty with the FAA with respect to allocation of these funds wherein preference has been given to airports serving "air commerce", which has been interpreted by the Administrator to mean airports serving air carriers.

The Federal Airport Aid Program has existed for 20 years. The first NAP (National Airport Plan) in 1947 listed 4,431 airports, 2,550 of which were proposed new ones, and the estimated cost of development was \$965.8 million. Twenty years later the NAP still lists 4,108 locations, 887 of which are new airports, and the cost of development is estimated at \$1.3 billion. In the intervening period 6,199 projects went into only 2,006 airports for a total Federal grant expenditure of \$890.1 million.

Out of those 2,006 airports 716 or 35.7% took \$744 million or 36.3% of the money, an average of \$1,039,000 per airport to serve air carriers primarily and general aviation secondarily. Even worse, \$607 million or 70.4% of that money went into only 240 trunk airline airports or an average of \$2,530,000 per airport. That money was spent to meet airline needs—not general aviation ones.

General aviation got the short end. \$118 million or 13.7% of the money was distributed among the 1,290 or 64.3% of the airports that got into the program at all. This averages out to \$91,473 per airport.

In short, the FAA has spent 90% of the money originally envisioned and given aid to only 45% of the airports originally envisioned. It has given a lot of projects costing a lot of money to a few airports and neglected the development of a "national system of airports" which requires something more than a few big terminal airports at major metropolitan hubs.

We feel that the FAA again needs to be reminded, as was done in Report 654, 87th Congress, First Session, with regard to the feelings of the Congress with respect to the Administrator giving due consideration to the needs of general aviation when allocating funds made available under this bill.

AOPA's position respecting FAAP priorities is set forth in detail in Annex B. In summary, AOPA

1. Favors enactment of S. 3096 as written but urges that the annual authorization be \$100,000,000 instead of \$75,000,000.

2. Urges that the report on the bill contain a directive to the Administrator that he complete the national system of airports before granting additional projects for improvements to airports which have already received aid.

3. Urges that the report on the bill contain a directive to the Administrator that he shall not withhold from grant any funds which have been appropriated except as may be required by the allocation provisions of the law.

AOPA appreciates the opportunity to present these views.

#### ANNEX A

##### AIRCRAFT OWNERS AND PILOTS ASSOCIATION

The Aircraft Owners and Pilots Association is an organization which provides services to more than 132,000 members located in every state in the Union. It is a non-profit association incorporated under the laws of New Jersey.

**Purpose:** It was formed 28 years ago to promote, protect and represent the interest of its members in aeronautics and the pursuit of flying; to promote economy, safety, popularity and use of aircraft by members. To accomplish these purposes, we seek several specific objectives: maximum freedom of the airspace for all users consistent with safety, improved aviation safety, an adequate airport system, an adequate system of air navigation aids, production of improved aircraft, reduction of frustrations in aircraft ownership and use, facilitation of international travel by private aircraft and wider public support of general aviation requirements.

**Membership:** Half of the active general aviation aircraft in the United States are owned and operated by our members. Our 132,000 members comprise about 30% of all the active civil pilots in the entire country. Sixty-three percent (63%) of our members hold private certificates, 24% hold commercial certificates, 2% hold airline transport ratings, 8% hold student certificates and the balance are pilots in military service. AOPA is not a professional or trade association in the common sense of these terms. The majority of our members are non-professional pilots and therefore do not join for the usual professional or commercial reasons characteristic of unions or business trade associations. AOPA is a service organization more analogous to the American Automobile Association or the National Rifle Association.

My statement has cited several examples of the smaller cities which have benefited from general aviation airports. In fact many times their sagging economies have been revitalized by the building of an airport.

Mr. Hoyt's survey which he mentioned of late 1965 is additional evidence of the fact that the funds provided by the Federal aid to airports program are sincerely needed. We feel that the only way to preserve and extend our air transportation system is to establish a long-term program such as the Federal aid to airports program and we sincerely request that this bill be enacted into law.

I thank you for the opportunity to appear here today.

The CHAIRMAN. Thank you very kindly.

Mr. Younger, any questions?

Mr. YOUNGER. No questions.

The CHAIRMAN. Any questions on this side? Mr. Pickle?

Mr. PICKLE. I don't have any questions now, Mr. Chairman.

The CHAIRMAN. Any other questions?

If not, we wish to thank you for coming and giving us the benefit of your views. Your statement in full will appear in the record.

Mr. KELLY. Thank you for the opportunity, sir.

(Mr. Kelly's prepared statement follows:)

It is a pleasure to appear before your distinguished group. I am Kent Rogers Kelly, associate executive director of the National Aviation Trades Association, national representative of general aviation businesses—sales, service, and supporting organizations.

One of the greatest frustrations of our huge general aviation industry is the almost total ignorance of the general public and of most authorities of its importance in the nation's economy. The catch-all term general aviation embraces all civilian users of the airspace who are not scheduled air lines or scheduled air carriers. Its contribution to the general transportation complex is seldom recognized or understood by anyone not actively engaged in it.

The issue is whether Federal Aid to Airports funding should be continued, the direction it should take, and its value to the national community. The Federal Aid to Airports program permits inclusion of communities in the airways transportation system even though they are not served by scheduled air carriers.

The latest Federal Aviation Agency figures show 9,940 airports in the U.S. on record with FAA at the end of 1965.<sup>1</sup> Of these, 709 are used by both scheduled air carriers and general aviation. In addition, 8,781 airports are used exclusively by general aviation.<sup>2</sup> From 1947 to 1965, FAAP funds were allocated to a grand total of 2,020 airports as follows:

Air carrier airports (92% of those existing).....	658
General aviation airports (15% of those existing) <sup>1</sup> .....	1, 362

<sup>1</sup> FAA Statistical Handbook of Aviation, 1965 edition, p. 11.

At the end of 1965, there were 284 control towers in the U.S., of which 28 were located at military establishments.<sup>3</sup>

In his budget message, the President remarked that FAAP funds should be restricted to air carrier airports. With all due respect to his position, we feel that the President has made a mistake in his appraisal of the impact of non-air carrier airports on communities served only by general aviation. FAA's Eastern Region recognizes the importance of general aviation and its relationship to industry and to the community, and has cited many instances of industries having located and communities having prospered because of general aviation facilities.<sup>4</sup>

A similar report by Cessna Aircraft Co. has cited specific instances in which communities have revived their sagging economy by recognizing the importance

<sup>1</sup> FAA Statistical Handbook of Aviation, 1965 edition, p. 7.

<sup>2</sup> Ibid., p. 11.

<sup>3</sup> FAA Air Traffic Activities Report, Aug., 1965, p. 19.

<sup>4</sup> General Aviation and Its Relationship to Industry and to the Community, FAA, Eastern Region, Airport Div., rev. ed., Apr., 1964.

of non-air carrier transportation,<sup>5</sup> and constructing facilities linking them into the great aviation system of the U.S.

Everyone has recognized the great change in air transportation over the last 25 years as aircraft of various categories have evolved. The old-time trunk carriers such as American Airlines, Trans World Airlines, United, Eastern, and Delta have moved from 175 mph DC-3 equipment to 550 mph jets. It is no longer economical for these operators to have short route segments; more and more they are traveling more than 500 miles and their turbine equipment operates most often from coast to coast.

As these major trunk carriers dropped intermediate stops, the transportation void 20 years ago was filled by smaller air line operations using hand-me-down equipment—feeder lines who would supply passengers from outlying airports to the trunk terminals. Because of the necessity for such operations, the federal government defined them as local service airlines, and brought them under the jurisdiction of the Civil Aeronautics Board with its route protection and tariff regulations. These feeder lines were also aided by federal subsidies. Now these subsidized airlines are evolving into regional trunk carriers and have invested heavily in new equipment, and they, too, are dropping uneconomic way station stops. Congressmen from the New England states, the greater Northwest, indeed all parts of the country, are aware that many of the communities they represent are losing their connections with the air transportation system.

In the U.S. 211 metropolitan areas contain 50,000 or more people. Of these, 14 are not now certified for air carrier service, and most of them are more than 30 miles from an airport used by scheduled air lines. Only 10 metropolitan areas generate 45% of all airline traffic. Jet aircraft serve 75% of all airline miles, yet only 60 airports receive jet service. At only 90 hub areas, 90% of all air carrier passengers emplane, with 10% boarding at the remaining airports. And 95 airports average fewer than two flights a day.<sup>6</sup>

Although most people believe that the skies are black with jet aircraft, the fact is that fewer than 2,000 air carrier aircraft are licensed in the U.S. The figures are:

Air carrier fixed wing <sup>1</sup> -----	1, 870
General aviation <sup>2</sup> -----	88, 742
Military-----	19, 455

<sup>1</sup> Air Transport Assn. "1966 Facts & Figures" (Jet, 712; turboprop, 288; piston, 870).

<sup>2</sup> FAA Handbook, op. cit., p. 77, Table 5.1.

Statistics as to the relative importance of air carrier and non air carrier transportation can be misleading unless scrutinized closely, but in 1963 the air lines flew 4,170,000 hours as opposed to general aviation's 13,900,000 hours.<sup>7</sup>

In the last 10 years, the character of the general aviation fleet has changed as dramatically. The modern light plane used for business and pleasure with the same flexibility as an automobile carries four to six people at speeds of 150 to 200 mph. Super charged single engine and light twin engine aircraft fly high and far—they operate best at 30,000 feet, and many of them have ranges of 1,000 miles and more. Their equipment is better than that of the scheduled airliners of the 1950's, and their pilots are better trained so that they can cope with all weather conditions. Contrary to the distorted ideas that general aviation aircraft are flimsy toys, the fact is that they are expensive, sophisticated, utilitarian tools—the best form of transportation available to cover the vastness of this country.

The impact of air taxi operations in the commerce transportation picture has been enormous, showing a growth rate far above any other segment of the industry, both demand and scheduled operations. They use light aircraft (less than 6¼ tons), are not subsidized, and do not have route protection by CAB. As of Nov., 1965, air taxi activities as modern feeder lines are operating more than 6,000 airplanes—three times as many as the total air carrier fleet, and 78 scheduled air taxi lines are operating.<sup>8</sup>

Everyone in the air transportation business acknowledges that the trend is for national and regional trunk carriers to drop additional locations which are no longer economic. The brunt of filling this void of getting more aircraft as

<sup>5</sup> Airport Study, Dr. L. L. Thomason, Cessna Aircraft Co., Jan. 10, 1964. (See also *The Best Investment We Ever Made*, FAA film, 1965.)

<sup>6</sup> Utility Airplane Council Conference Briefing on General Aviation Report, pp. 34-36.

<sup>7</sup> Utility Airplane Council, op. cit., pp. 4-5.

<sup>8</sup> Scheduled Air Taxi Operations, Nov., 1965, FAA.

normal transportation into our skies rests on creating facilities from which they can operate regularly and during all weather conditions. This necessity must be recognized if a long range financing plan is to be achieved. The only way to preserve and to extend our aviation transportation system and to establish a long term program is to continue the FAAP program, and to recognize that the funds so spent are, indeed, for the public good, benefiting the economy of the entire nation.

We sincerely request that the time for making grants under the FAAP Act be extended and that this bill be enacted into law.

Thank you again for the opportunity to present our position.

The CHAIRMAN. Mr. Patrick Healy.

**STATEMENT OF PATRICK HEALY, EXECUTIVE DIRECTOR,  
NATIONAL LEAGUE OF CITIES**

Mr. HEALY. Mr. Chairman and members of the committee, I am Patrick Healy, executive director of the National League of Cities, and I appear here today to express regrets of Mr. Sam Massell, Jr., president of the city council and vice mayor of Atlanta, Ga. Mr. Massell, who is chairman of the National League of Cities Committee on Airports, was scheduled to appear in behalf of both the National League of Cities and the U.S. Conference of Mayors to testify before you today on the legislation which would extend the Federal aid to airports program, but his schedule prevented him from coming to Washington and he requested that I ask you to have his statement inserted in the record on H.R. 13665 and S. 3096.

The CHAIRMAN. It will be done.

Mr. HEALY. And he asked that I briefly summarize it for you.

The National League of Cities strongly favors enactment of this legislation and hopes that such action will take place prior to the adjournment of the 89th Congress. We do suggest three amendments.

One would be a purpose section to dramatize the needs of local government for continued airport construction assistance. In addition, the National League of Cities hopes that this committee and the Congress will expand the program to the level recommended by our national municipal policy, \$150 million a year for the next 5 years.

And, third, we would also hope that this legislation would be amended to permit the Federal Aviation Agency to acquire lands surrounding airports for future use by the municipality or order airport sponsors as a part of the airport facility. This amendment is more fully explained in Mr. Massell's statement.

We believe that such a program would be of definite value as we attempt to undertake sound airport development on an economical basis and it would also contribute to the solution of the aircraft noise problem near airports.

In his statement for the committee, Mr. Massell requests that two brief documents be included in the record on this legislation as part of our testimony. One is an article from the April issue of Nation's Cities and the other is a statement of our national municipal policy, which is the official declaration of representatives of some 13,500 municipal governments of the National League of Cities.

Mr. Chairman, I want to thank you for permitting me to testify in place of Mr. Massell, and we hope that you will find our suggestions for amendments helpful and we trust that Congress will act quickly on this legislation.

The CHAIRMAN. That is what we are trying to do, sir. I might say that you have very able representation of the city of Atlanta, Mr. Mackay, whom I am sure is doing a great job on the committee and is very much interested in your testimony.

Any questions?

If not, we thank you for your statement.

Mr. HEALY. Thank you.

(Mr. Massell's prepared statement follows:)

STATEMENT OF SAM MASSELL, JR., PRESIDENT OF THE BOARD OF ALDERMEN AND VICE MAYOR OF ATLANTA, GA., ON BEHALF OF THE CITY OF ATLANTA, NATIONAL LEAGUE OF CITIES, AND THE UNITED STATES CONFERENCE OF MAYORS

Mr. Chairman and members of the House Interstate and Foreign Commerce Committee, I am Sam Massell, Jr., President of the Board of Aldermen and Vice Mayor of the City of Atlanta, Georgia, and Chairman of the Committee on Airports of the National League of Cities. I appear before you today in support of H.R. 13685 and S. 3096, on behalf of the City of Atlanta, the National League of Cities (formerly known as the American Municipal Association), and the United States Conference of Mayors. Atlanta is the capital city of the Southeast with over 1,200,000 in metropolitan population and the fourth busiest airport in the nation. The National League of Cities represents 14,000 cities and towns of all sizes throughout the United States, and the Conference of Mayors consists of cities of over 80,000 population.

The legislation which is the subject of these hearings this morning would extend the Federal Aid to Airports Program for another three years. S. 3096 has already passed the United States Senate, substantially in the form in which it was introduced by Senator Monroney. During the Senate Subcommittee hearings on S. 3096 we made several suggestions for amendments, all dealing with the fact that this vital program has not been given a high enough priority by the Congress and the Administration. We will continue to make these suggestions for improving this legislation, but we certainly hope that this Committee will adopt them prior to reporting this important bill to the floor of the House of Representatives this year.

The failure of Congress to make this a continuing long-range program and the Administration's efforts to cut it back from its present inadequate level is of increasing concern to me and those I represent. True, your Committee and aviation spokesmen in the U.S. House of Representatives have been the mainstays of solid support for the program, but the lack of interest in it is strongly evident elsewhere in the Federal government. We wish to go on record, therefore, as fully supporting the legislation before you today, as far as it goes toward meeting the pressing problems facing our nation's system of public airports.

I would, however, criticize its proposed funding level which fails to recognize the wide scope of airport problems communities face as they find themselves more deeply immersed in the jet age and the oncoming supersonic era. Gentlemen, you are undoubtedly aware of the fact that small, medium and large airports in all parts of the country are faced with the necessity of undertaking major capital improvement programs if they are to provide safe and adequate facilities for the new types of aircraft that wish to utilize them. According to a recent article which appeared in Nation's Cities, the official publication of the National League of Cities, the airlines had on order, at the beginning of 1965—less than 20 months ago—over 290 jet aircraft valued at more than 1.5 billion dollars. Only a few months later—these figures had increased to more than 480 aircraft valued at 2.4 billion dollars! In addition, millions of dollars are being spent for general aviation aircraft which are almost too numerous to count. Increased landing area facilities—with safe and modern construction—will be needed to service this fantastic increase in the number of aircraft. It must also be noted that more and more people are turning to aviation as the most convenient and expedient mode of transportation in our rapid urban age, and will, to a hitherto unprecedented degree, fill up the extra seats being provided.

The importance of aviation safety is increasing in direct proportion to the evergrowing increase in aircraft seating capacity, increase in number of patrons, increase in number of aircraft, increase in number of flights, and increase in airborne hours—and every prediction is that these figures will constantly swell—yet the Federal Aid to Airports Program has not kept pace and, in fact, struggles for existence at the same funding found inadequate six years ago.

These facts clearly indicate to us that a greater and higher priority must be given to this Program.

The financial plight of local government is well documented. In the areas of housing, education, poverty and a score of others, we are pressed for adequate funds to complete the tasks that lie before us. We value federal assistance and these programs too, but—as important as these fields are—the benefits are primarily local whereas airports are of coast-of-coast service. The need for expanded airport development in any given city is directly determined by economic considerations affecting one or more additional city, and it is important to the economy of any active community that airports and other centers of commerce be adequately developed. The cities and towns of this country cannot be expected, in light of the demands that have been placed upon them by their citizens for local governmental services, to finance all of the needed improvements in the field of aviation ground facilities from which the whole nation benefits. Thus, it is imperative that you, as members of this Committee review this legislation to realistically indicate the serious problems which the communities face in this vital area.

I would suggest that an amendment be included in H.R. 13665 or S. 3096 by way of a purpose section to dramatize the needs of local government for continue airport construction assistance. The statement of purpose we suggest for this extension of a Federal Aid to Airports Program should be worded in such terms that it will justify our next suggested amendment to the bill.

A recent survey of public U.S. airports, which was undertaken by the Airport Operators Council International, the American Association of Airport Executives, and the National Association of State Aviation Officials in cooperation with a number of other associations which represent local governments, clearly indicates that \$2 billion will be needed by 1970 to improve existing airports and to build new ones to insure that our nation will be able to withstand the full impact of the jet age. The survey also indicated that local governments are or will be able to shoulder \$1.3 billion of this total, largely through revenue bonds. However, a minimum of \$150 million per year by way of federal contributions to these local efforts will be necessary to make up the difference. Thus, we strongly urge you to amend the legislation before you today to increase the authorization for this program to \$150 million per year for a period of 5 years. This longer extension period would benefit airport sponsors by providing a basis for longer term planning than is possible at present.

A third amendment of which we would urge their consideration is contained in the following statement unanimously adopted by the National League of Cities' Committee on Airports at its National Legislative Conference on March 29, 1966:

"Comprehensive airport plans including the need for area expansion frequently project a long-range need for land not scheduled for use until several years in the future as predicted service increases. Municipalities and other airport sponsors find it economically impossible to purchase land to hold, yet the history has been that such properties in the interim are being developed and thus cost far in excess of their original values when the purchase is delayed until actual use is intended. In the interest of minimizing final expansion costs, the Congress is urged to provide the authority and funds to the FAA for the purpose of direct Federal acquisition of such lands incorporated in approved comprehensive plans for subsequent sale to the municipality or other airport sponsor under the then prevailing participation formula."

By amending this legislation in these three respects, we believe that those members of Congress and the Administration who fail to recognize the value of the program and to understand its important impact on the economic growth of our nation will become more vividly aware and will be more easily convinced of the desire of the Congress in these respects.

Mr. Chairman, to further illustrate our strong feelings about this legislation before your Subcommittee today, we would like to request that two brief documents be included in the record on this legislation as part of our testimony. These are:

1. "Airports And The New Jets," an article which appeared in the April 1966 issue of *Nation's Cities*, the official monthly publication of the National League of Cities, which you will recall I referred to earlier in the course of my testimony, and

2. Sections 2-1 through 2-7 of National Municipal Policy, the official declaration of the 13,500 member municipalities of the National League of Cities, which seven sections of policy were unanimously adopted by the membership of NLC at its most recent annual meeting, held in Detroit, Michigan, in July of 1965. I

believe that these two documents will clearly indicate the attitude of the nation's municipalities towards the vital and important legislation before you today.

Again, and in light of the somewhat clouded history of this program in recent years, we want to thank you, as members of the House Interstate and Foreign Commerce Committee for your special and continuing interest in the problems of the nation's airports. We hope that you will find our suggested amendments acceptable as improvements in the legislation which will bring this vitally needed federal aid program into the proper perspective which it so justly deserves in light of the overwhelming local needs in this field.

Thank you for giving us this opportunity to testify before you.

---

[Nation's Cities, April 1966]

#### AIRPORTS AND THE NEW JETS

##### SHORT HAUL CRAFT OPEN UP NEW MARKETS BUT LEJ'S BUDGET CUTS HURT CONSTRUCTION

A number of America's medium-sized cities now have joined the jet age; and many more will be flying into the 600-mile-per-hour era in the next three or four years.

The reason is simple: a technological breakthrough with development of the smaller jets—the British BAC-111, the Boeing 727 and 737, and the Douglas DC-9. They can land and take off on shorter runways and, more importantly, they can operate economically over runs of 100 to 300 miles.

But mixed into this reality and possibility of improved air service for smaller cities is a major paradox. Even as it is proved that it can be done, the ugly fact arises that it may not be done.

The Federal Government is cutting back on financial aid for construction and improvement of small and medium-sized city airports at a time when scheduled and general aviation is laying out millions of dollars for new equipment.

A recent survey sponsored by three knowledgeable organizations—the Airport Operators Council, the American Association of Airport Executives, and the National Association of State Aviation Officials—finds that \$2 billion will be needed by 1970 to improve existing airports and build new ones so that the nation's medium-sized cities will be ready for the jet age.

And good airport facilities—to handle both commercial traffic and business executive aircraft—have been found to be vital to the economic development of a community or a group of communities.

Granted, \$2 billion is a lot of money, but the survey minimizes the financial problem by finding that the states and communities will be able to raise about \$1.3 billion (largely by increasing their bond debt), leaving some \$150 million a year to federal allocations.

Therein lies the rub. The current aid-to-airport program of \$75 million a year is reduced to \$50 million in President Johnson's budget for fiscal 1967, chiefly of course because of huge increases in military expenditures. And Congress has said it wants the present three-year program to end without being renewed.

It has been estimated that every dollar in federal money provides incentive for three dollars in state and local contributions. With the federal well drying up, state and local funds will be put to other uses.

The Air Transportation Association (ATA) puts the problem in a different way: "Our national air transportation system is unbalanced; schedule reliability at smaller city airports has not kept pace with continuing improvements in schedule reliability at larger airports."

This is chiefly because the smaller airports do not generate the required passenger traffic to become eligible for federal funds through the Federal Aviation Agency, for installation of electronic and visual aids needed to promote all-weather flying and improved schedule performance.

ATA recently surveyed the so-called local service airlines, which generally serve smaller cities, and came up with a "priority listing of airports in worst need of aids." On this list are 93 cities served by 12 airlines.

Included are such representative cities as Bridgeport, Conn.; Johnstown, Pa.; Santa Ana, Calif.; Reno, Nev.; Palm Springs, Calif.; Scotts Bluff, Neb.; Flagstaff, Ariz.; North Platte, Neb.; Morgantown, W. Va.; Bloomington, Ind.; Kokomo, Ind.; Muncie, Ind.; Ithaca, N.Y.; Watertown, N.Y.; Plattsburgh, N.Y.;

Benton Harbor, Mich.; Traverse City, Mich.; Decatur, Ill.; Dubuque, Iowa; Paducah, Ky.; Burlington, Iowa; Charlottesville, Va.; Florence, S.C.; Rocky

#### TRIO OF NEW PERFORMERS FOR SMALLER FIELDS



Mount, N.C.; Anniston, Ala.; Albany, Ga.; Columbus, Miss.; Brownwood, Tex.; Roswell, N. Mex.; Pine Bluff, Ark.; Hot Springs, Ark.; Lewiston, Idaho; Seattle, Wash.; and Olympia, Wash.

The trouble basically is that these and other cities, will not become eligible for airport aids under FAA rules unless they generate more passengers and more flights; and without the airport aids their chances of generating this extra traffic are pretty slim. It's a problem almost without apparent solution, particularly with the cutback in federal funds.

ATA, which speaks for the airlines rather than airport operators, does purport to see a happier side of this picture, however. President Stuart G. Tipton notes that at the beginning of 1965 the airlines had on order 297 airplanes valued at \$1.5 billion.

"Only six months later," he adds, "the airlines had on order 480 aircraft valued at \$2.4 billion. More orders are expected, but so far the outstanding commitments exceed anything in airline history. Of the aircraft on order, 342 are Boeing 727s, 737s, Douglas DC-9s and BAC-111s, all designed specifically for the short- and medium-range intermediate markets."

Tipton says the simple answer to most of the complaints from the intermediate markets is the new planes which are coming on the flight line. He adds:

"Early reports on their economic characteristics are most encouraging. We are highly optimistic about the impact of the smaller jets in markets where the stage length is 200 miles and up. The small twin-jet will have direct operating costs of half that of the big jets at these stage lengths. With such favorable economics, obviously the airlines will have much greater flexibility in scheduling than they have had in the past."

Sen. A. S. (Mike) Monroney (D-Okla.), chairman of the Senate Aviation Subcommittee, is at one and the same time aviation's best friend in Congress and its severest critic. He says "the adequacy of service (to small- and medium-sized cities) seemed to come to an abrupt end with the inauguration of the long-legged jets which overflew us."

But even Monroney sees hope in the advent of the smaller jets. "In all fairness to the trunklines," he says, "I should like to add that this situation may be on the way to correction with the delivery of intermediate jet aircraft."

Monroney is convinced, however, that the trunklines—the major commercial carriers—particularly are "not giving adequate service to intermediate cities" because they do not generate enough fare-paying passengers. He held a series



of hearings on the subject last year, designed quite frankly to light a fuse under the trunks to get them to improve service.

Sen. Albert Gore (D-Tenn.) is not as hopeful as is Monroney that the airlines, either trunk or local service, will improve their service to smaller and medium-sized cities without further prodding from Congress or the Civil Aeronautics Board.

"The taxpayers have invested much money in the development of airline service," says Gore, and "we ought to be sure that the result will be more, as well as faster, service to the American people.

"Policies must be adopted and, if necessary, legislation enacted to ensure that full recognition is given by the airlines and our regulatory agencies to the needs of the intermediate-size cities," Gore says.

Sen. Daniel Brewster (D-Md.), a member of the Senate Aviation Subcommittee, has introduced a bill that would amend CAB procedure on adequacy of service by both the trunk and local service airlines. Generally, it would require periodic CAB investigations and an annual review of service adequacy.

Barring something unexpected, the Brewster bill is not expected to get very far in Congress at this time. There also is some sentiment in Congress toward improving local carriers' service to smaller cities by (1) requiring CAB to grant them offsetting richer markets and (2) improving subsidies.

CAB policy in the last couple of years or so actually has been along the lines of giving local service carriers a crack at some of the better markets. Although this is considered a liberal Congress, chances are almost nil that it would vote any increase in subsidies; its most recent action along these lines was to go along with an Administration plan to eliminate helicopter service subsidies.

Sen. Ross Bass (D-Tenn.), noting that no major new airlines have been created since World War II, believes that much of the problem is because of a lack of competition. Once the airlines got on their feet through federal subsidies, he says, "they thumbed their nose at us."

CAB Chairman Robert T. Murphy is not so pessimistic as some of the members of Congress. He says that, on the whole, intermediate cities have received substantial service improvements in recent years "and even more can be anticipated in the immediate future."

Murphy says the board is aware that "despite the significant and impressive improvements in our national air transportation system over the past several years, there remain communities which do not now receive a wholly satisfactory pattern of service."

But he adds that a great deal has been accomplished through informal conferences conducted by the Office of Community Relations, created in 1961 to assist communities in obtaining the air service they need and desire. He says this office "has worked closely with more than 150 communities in solving their problems with the carriers."

It does seem apparent that generally better air service for intermediate cities is en route because of the introduction of the new smaller jets and because of continuous pressure on the airlines at the federal, state, and local levels. It also seems obvious that more federal money will have to be made available if the improvements are to continue, if the intermediate cities are to have really adequate air service.

This type of federal aid probably will have to await some settlement of the war in Vietnam and, obviously, some more progress in the domestic Great Society programs to which President Johnson has attached a higher priority label. But, for many smaller communities, the need is already seen as having high local priority.

---

## SECTION OF MUNICIPAL POLICY OF NATIONAL LEAGUE OF CITIES

### 2. AIRPORTS

2-1. The social, cultural, and economic benefits inherent in our national air transportation system can only be realized to their fullest through a system of public airports and airport facilities adequate to serve the nation and its municipalities. Municipal airports link our communities and their interests with the national air transportation system and serve the private commercial interests of the scheduled and supplemental airlines, corporate and private aircraft owners, and other general aviation users. Many municipal airports, although provided, operated, and maintained at the sole expense of a single

government, serve as regional airports and provide full services and benefits to the residents and business economies of neighboring communities, counties, and adjacent states. Some municipal airports are currently used by the military; the balance represent a reservoir of facilities vital to the nation's defense in time of emergency. Therefore, the need for adequacy in our system of public airports must be recognized as a matter of national concern and interest.

2-2. The assistance of state governments in developing a coordinated system of airports is welcomed. However, the extent of state regulation, control or participation in airport matters should be confined to those areas in which they are willing and prepared to assume financial responsibility, in whole or in part.

*Federal Aid for Airports*

2-3. The problems of planning, developing and providing adequate airports have increased in both intensity and number by the requirements of existing jet aircraft. Problems can be expected to swell even further with the introduction of supersonic transports. These problems far exceed the financial ability of local governments, hard pressed to meet the growing fiscal requirements of basic municipal services, to surmount them alone. Although we are gratified by the three year extension of the Federal Aid Airport Program in 1964, we are increasingly concerned by the failure of Congress to make this a continuing long-range program. We are particularly concerned by the disposition expressed by some members of Congress to regard this program as one which should be reduced at once and ultimately abandoned, leaving local governments to shoulder the ever increasing financial burden of providing facilities which are clearly of national significance. We, therefore, reaffirm endorsement of the concept of a permanent long-term authorization program of federal aid for airports. This is required to assure the realization of a national system of civil airports that is essential to the economy and commerce of the United States.

2-4. Congress is urged to provide funds to allow FAA to make grants to municipalities and eligible airport sponsors for the preparation of comprehensive metropolitan area airport plans. Such plans should be coordinated with comprehensive development plans for the area involved.

2-5. Congress has created a public right of transit through the navigable airspace including the right to take off and land, and any property taken or damaged by such transit should be compensated by the United States Government, not the airport operator. We, therefore, strongly urge enactment of legislation affirming the intent of Congress with regard to this right of transit and specifically declaring that any claims for taking or damage to property by the flight of aircraft are the sole responsibility of the federal government and that it has a duty to pay compensation under such circumstances.

2-6. Present estimates of the effect of the introduction of the supersonic transport indicate that off-airport costs for acquisition of land and aviation easements, primarily for alleviation of noise problems, will be substantial. The federal government should bear the full financial responsibility for the acquisition of land easements or other property interest outside airport boundaries and for the removal of obstructions outside airport boundaries, if such action is deemed necessary by federal authorities for aviation safety or because of aircraft noise.

2-7. The federal government should also recognize its exclusive financial responsibility for the provision, operation and maintenance, and relocation, when necessary, of all safety devices and facilities related to the approach, landing, and roll out of aircraft, including the provision of aircraft fire and rescue protection.

The CHAIRMAN. Our next witness is Mr. A. B. McMullen, executive vice president, National Association of State Aviation officials.

I would ask you to put your statement in the record and summarize it, if you will.

**STATEMENT OF A. B. McMULLEN, EXECUTIVE VICE PRESIDENT,  
NATIONAL ASSOCIATION OF STATE AVIATION OFFICIALS**

Mr. McMULLEN. I am prepared to do that, Mr. Chairman. I have a statement which I am submitting and also a summary of that state-

ment which I had typed up yesterday, and I am now prepared to summarize it so it will only take a few minutes.

The CHAIRMAN. We appreciate that.

Mr. McMULLEN. I will identify myself. I am A. B. McMullen, executive vice president of the National Association of State Aviation Officials. The statement which I am submitting for the record strongly supports the continuation of the Federal aid airport program and recommends early adoption of the legislation to extend the life of the Federal Airport Act, and it also outlines certain administrative problems which I would like to briefly invite your attention to today.

These problems included the rather haphazard manner in which appropriations have been made over the period of the program since 1946 and the need for a long range well planned and well administered program.

Congress has recognized this need and I am including in my statement reference to several congressional reports which point this out and the subsequent action that Congress took in the hopes to alleviate the situation, but it has not been successful and in my summary I point out why. And I invite attention to the criteria which the FAA utilizes now in allocating the funds under the program and I would like to read very briefly the five priorities which now govern the allocation of funds.

Priority A is all-weather operations at major air carrier airports. Priority B is the development of improved service by the scheduled airlines. Priority C is to provide additional airport capacity required by scheduled airlines. Priority D is development to divert aircraft operations from airports serving scheduled airlines. And the last and final priority, the last of the list, is development for general aviation at airports in medium and small communities.

Now, if the FAA followed that priority, of course, it is reasonable to assume with only \$71 million available for requests, and General McKee has already stated they have requests or applications for \$274 million, general aviation will receive very little assistance which is badly needed.

Now, NASAO members recognize the importance of improving the airports in approximately 525 cities served by the scheduled air carriers. However, they believe it is equally important that consideration also be given to the several thousand cities and towns that have not yet been fortunate enough to receive scheduled air service, but which can be integrated into the air transportation system through the nonsubsidized commuter or air taxi services, which are the fastest growing segments of the aviation industry.

This is of particular importance to the smaller towns that have lost all rail passenger service, and which are looking toward air service and airports as a means of competing for new industry to improve their economic well-being.

The third problem which we have considerable concern about is the delay in announcing the program each year. Congress has in previous legislation directed that the FAA release the program on January 1 of each year for a subsequent fiscal year; in other words, a program beginning July 1. Well, the appropriations have been available since August of 1965. The FAA did not even request applications for this program for this fiscal year 1967 until, I think it was in May, when it

should have told the cities whether or not there would be any program on January 1.

It was not until May that they asked for applications. They have not yet released a program for this fiscal year, which means we have lost all the fall and summer construction season, and the cities and many of the towns, of course, are paying interest on funds that have been raised to process or develop airports during this period. That is something we think the Congress should investigate and look into.

In summary, in order to assure that the development of airports keeps pace with the ever-expanding requirements of the industry, we recommend early approval of the bill H.R. 13665 or S. 3096, with amendments, which would, one, extend the Federal Airport Act for a minimum of 5 years, and increase the annual authorization of funds to \$150 million, and it is further recommended that the committee determine whether all classes and types of airports are being given a reasonable opportunity to participate in the program and why the annual FAAP programs are not released in January of each year as required by law.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. McMullen.

Any questions?

Mr. MACKAY. Mr. Chairman, I want to make a comment on urban mass transportation and on aviation. It seems to me that these bills tremendously understate the actual need, the immediate urgent need. We talk about guidelines and looking at our economy, if there are any two things that I think everybody understated in this Congress it is urban mass transportation, and this authorization. It's not much when you spread this money across the United States of America.

Mr. McMULLEN. That is right. I couldn't agree with you more.

The CHAIRMAN. Thank you very much. Your full statement will appear in the record.

Mr. McMULLEN. Thank you.

(Mr. McMullen's prepared statement follows:)

**STATEMENT OF A. B. McMULLEN, EXECUTIVE VICE PRESIDENT, NATIONAL  
ASSOCIATION OF STATE AVIATION OFFICIALS**

Mr. Chairman and members of the committee, my name is A. B. McMullen. I am Executive Vice President of the National Association of State Aviation Officials, whose membership is composed of the Aeronautics Commissions and Departments of the various States. These agencies provide technical advice and assistance to communities in the State, they administer State funds expended for airport development, and many, in compliance with State law, approve projects and administer the Federal Aid Airport Program within their respective States. Therefore, they have a day-to-day working knowledge of the administration of the Program and how it benefits the communities and citizens of the United States.

NASAO strongly supports a continuation of the Federal Aid Airport Program and recommends early adoption of legislation to extend the life of the Federal Airport Act. However, we recommend certain amendments to H.R. 13665 which it is believed would increase the effectiveness of the Program, and which we hope will receive your favorable consideration.

Briefly, this statement will express NASAO's views with respect to—(a) the need for a continuing long range airport development program; (b) the estimated amount of funds that will be required to provide the airport facilities necessary to meet the mushrooming requirements of aviation during the next four years; (c) who should pay the costs; and who would benefit from the planned development. First, I would like to discuss the question of

## WHO BENEFITS?

Every citizen benefits from aviation and air transportation, although they may never own, or even fly in an air vehicle. At one time the thought prevailed that an airport served only those who utilized scheduled air service and the owners of aircraft, and while some may still be of this opinion, there is now ample proof that AIRPORTS SERVE THE ENTIRE COMMUNITY, and are an absolute necessity to the economy of the Nation.

Attached to this statement is an appendix containing excerpts taken from various publications during a ten-day period in April 1966, which illustrate the almost unbelievable growth that is currently taking place in aviation.

During recent years, the airport has become a most essential element in the expansion of local industry. Often the airport is the industrial heart of the community, particularly in distressed areas seeking to expand their local payrolls and income producing sources.

U.S. industry has not only accepted the airplane as a business tool, that is utilized by executive, sales and service personnel travelling to every type and size community, but in fact, most companies now require that the community be able to provide airport facilities and accommodations for their aircraft before a branch office, factory, or warehouse is located or enlarged in that community.

Following are excerpts from statements made by representatives of small and medium size towns during the past six months, which indicate the importance of an airport to the industrial and economic health of their community. These statements are typical of several hundred recently received from communities throughout the entire United States.

*Sullivan, Indiana*—Two industries are waiting for our airport completion before they will come to our community—one would start employing approximately 75, and the other 175 men and women. (The population of this town has been decreasing for several years.)

*Yankton, South Dakota*—Dale Electronics Company located here six years ago because the airport was available for rapid transit of their officials and air freight shipment of their products. They employ from 100 to 300. Without airport facilities, Yankton would soon deteriorate to a depressed area situation.

*Greenwood, Mississippi*—has obtained several industries because of existing airport. One employs over 900 people.

*Bridgeport, West Virginia*—Lockheed-Georgia, Consolidated Gas Supply Company, and others have large plants here only because of our airport facilities.

*Ruidoso, New Mexico*—Our basic industry is tourism. Aviation has increased our tourists by 12%. Three industries have located here due to airport facilities.

A recent article in the Montana Aeronautics Commission monthly newsletter stated: "Montana Airports certainly played a vital role in the survival of Northern Montana during the recent flood and continue to be of the utmost importance in the post-flood supply line. In many areas that were completely isolated, the airport remained high and dry to serve as a transportation center for the evacuation of the flood victims and the center for food, medical supplies and clothing."

For these reasons, NASAO members are deeply disturbed by recent statements that the continued Federal Aid Airport Program would give priority to airport development which primarily serves interstate air transportation or which provides essential improvements to national air commerce. We interpret this to mean that Federal aid would be limited primarily to certificated air carrier airports and possibly secondary airports in metropolitan areas which relieve traffic congestion at terminal airports. We vigorously oppose this philosophy because all types of airports are required.

For the past 40 years we have witnessed a continuously expanding utilization of air vehicles for transportation to and from small communities, and a wide variety of uses including agriculture, fire fighting, search and rescue, construction, power and pipeline patrol, advertising, etc.

The ambulance plane may make it possible to reach a hospital in time for a successful operation, serum or blood may be transported by air in time to save a life. Traveling by air, or the use of airmail may make it possible to close a contract or make a profit that would have been lost without the benefit of air transportation.

Our highway traffic in many places is now being monitored by helicopters, which is contributing to highway safety, and police departments are utilizing small aircraft in tracing escaped convicts.

It is recognized that a considerable amount of costly expansion faces the air carrier airports of the Nation. However, it should be remembered that the trunk and regional carriers combined serve only about 525 of the total 9500 airports in the United States.

To meet increased public demand for the speed and comfort air travel offers, the trunk carriers have purchased, and will continue to invest in larger, faster and heavier aircraft. They are looking forward to adding supersonic transports to their present fleets within the next five to ten years. In one way or another, these new trunk aircraft require the expansion, redesign, or improvement of many of the Nation's larger airports.

The regional carriers are now replacing their piston engine fleet with larger, faster turbo-prop and jet powered aircraft which are unable to operate safely from many of the airports in the communities the carriers are now serving. The communities confronted with this problem are faced with expanding and improving their airports or losing airline service. For example, in Illinois only six of twenty airports now receiving scheduled airline service can accommodate the DC-9 aircraft recently purchased by a regional carrier serving that state.

To provide air transportation to several thousand communities—some of which have already lost trunk or regional air carrier service, and to many others which have never received such service—the charter and air taxi operators are increasing the number of their aircraft and schedules.

By cooperative ticketing, scheduling, and reservations, trunk, regional, and air taxi companies are gradually and jointly developing a nationwide metropolitan-county seat air transportation system; however, a comparable national airport system, with all-weather, lighted airports in small communities will be necessary before this non-subsidy, commuter type air service can attain its full potential, and passengers can "fly all the way" regardless of the size of the community, time of day, or type of weather.

The Federal Airport Act clearly expresses the intent of Congress that Federal aid airport funds are made available for all types and classes of airports. We consider it desirable that this be re-emphasized either within the language of the new Act or in the Committee's report.

#### LONG RANGE PROGRAM REQUIRED

Mr. Chairman, NASAO officials have appeared before this Committee many times during the past 20 years to recommend that Congress establish federal aid to airports as a long range program, with advance appropriations or contract authorization extending over a period of several years, which would reduce the time consuming frustrations and the administrative, financing, and construction costs that result from the stop and go, slow and rush situations State and local partners in the FAAP program have experienced over the years.

Congressional opinion regarding the need for advance funding of the program has been clearly documented in previous House and Senate Commerce Committee reports. In Senate Report No. 654, dated August 1, 1961, the Committee on Commerce stated:

"Clearly the inadequacy of the airport program between 1947 and 1955 is ample demonstration that the annual appropriation system is not adequate. During the first seven years under the annual appropriation system when the local communities were confronted with uncertainty from year to year as to whether funds would be made available they were only able to match \$212,628,000. (\$30,375,000 annually) This is in contrast to the first four years under the advance contract authority system when they were able to match Federal funds in the amount of \$204,558,000 (\$51,139,000 annually—a 60% increase).

"Because of the extreme fluctuations in the Federal funds made available from year to year, public agencies were understandably reluctant to make the financial, engineering, site selections, and other necessary plans for the development of an airport project. In a number of cases they had issued general obligation bonds for purposes of matching Federal funds, but were unable to secure Federal aid as a result of inadequate appropriations. The appropriations system contributed in substantial degree to the failure to accomplish more than a small portion of the projects contemplated by the original act."

The House Committee on Interstate and Foreign Commerce stated in House Report No. 728, dated July 18, 1961, that:

"The Committee feels that a system of advance appropriations, giving sponsors definite assurances as to Federal aid available far enough in advance to permit

local planning, will meet the objections sponsors found with the annual appropriation method provided in the original act."

In 1961, Congress extended and also amended the Federal Airport Act by adding Section 4(b) which reads: "It shall be the duty of the Administrator to make public by January 1 of each year the proposed program of airport development intended to be undertaken during the fiscal year next ensuing. . . ."

This Congressional interest in advance funding of the program and early announcement of the Program was indeed gratifying and sincerely appreciated. However, the advantages that should have resulted from this Congressional action have not materialized.

As an example, on August 16, 1965, Congress approved an amount of \$71 million for federal aid to airports for the fiscal year beginning July 1, 1966. However, it was as late as May 9 that FAA announced that the Agency would accept applications for funds under the 1967 FAAP program, and agency officials have estimated it will be October before the 1967 Program is released—ten months later than the law requires. As a result, little or no construction to be paid for with funds available on July 1, 1966 will be started until sometime in 1967.

In the interim, Congress has been requested to "deappropriate" \$21 million from the \$71 million previously approved, leaving only \$50 million for fiscal year 1967.

Insofar as State and local sponsors are concerned, actions such as these place the FAAP program in the same costly and confusing position it was in during the years 1947–1955 when appropriations ranged from a high of \$45 million in 1947 to zero in 1954, when no funds were requested by the Department of Commerce.

It has also been reported that consideration is being given to future reduction and ultimate termination of the program. In our opinion, it is time all branches of the government recognize the fact that the airplane is here to stay, and that the aviation industry and air transportation are among the most vigorous and fastest growing elements of the Nation's economy. Instead of thinking and talking about when and how the Federal Aid Airport Program can be reduced and terminated, the need for long range airport development plans and programs should be emphasized, in order that the lack of adequate airport facilities will not retard the growth and the ever increasing benefits we are now receiving from travel and transportation by air.

We firmly believe the Federal Aid Airport Program should be extended now for a *minimum of five years*, and preferably ten years, rather than three—and that necessary action should be taken to assure that sponsors will have a knowledge of the amounts of Federal airport aid that will be available to them well in advance of the start of the fiscal years concerned.

#### ESTIMATED COST OF PLANNED DEVELOPMENT—WHO PAYS?

During the last three (3) months of 1965, NASAO, the Airport Operators Council, and the American Association of Airport Executives jointly conducted a National Airport Survey to determine—

- (a) the amount and type of public airport development the States, counties and cities have planned for the four years 1966–1967–1968–1969;
- (b) the estimated cost of this development;
- (c) the amount of state and local funds that are, or can reasonably be expected to be, available for airport development during the 4-year period (1966–1969); and
- (d) the amount of Federal, State, and local funds spent for civil airport development during the five year period 1960–1964.

Detailed summaries of this survey are being submitted for the record.

Briefly, it was found from the survey that for the immediate future, 1966 through 1969, the estimated cost of needed and planned airport development is \$1,955,809,000. Of this amount, sponsors (States, counties and municipalities) expect to have available \$1,328,750,000, leaving a deficit of \$627,059,000—or approximately \$157 million annually. This deficit will have to be made up entirely, or at least substantially, by funds made available under the Federal Aid Airport Program, if the needed facilities are to be provided.

The survey returns also indicate that Federal, State and local funds expended for public airport development during the 5-year period 1960–1964 totaled: \$1,251,102,000, of which the Federal Government provided \$301,114,000—or 24%. However, included in the \$1,251 million total expenditure was \$360 million of airport development projects such as administration buildings, passenger and freight

terminals, hangars, parking lots, roads, etc., which were paid for entirely with State and local funds. Of the remaining cost (eligible FAAP items) the Federal contribution amounted to less than 34% (not 50%, as many persons believe).

Airports are the very foundation of air transportation, and in our opinion, for the dollars spent, the Federal Aid Airport Program has been the greatest industry/transportation/economy stimulation program in which the Federal Government has participated. We recommend the program be accelerated substantially beyond the rate proposed in H.R. 13665.

My first appearance before a Congressional Committee<sup>1</sup> interested in airport development occurred 28 years ago. Since that time, I have been closely associated with, and have witnessed the development of thousands of airports, many of which now far exceed in size and traffic-handling capacity anything envisioned by other than the most advanced thinking airport planners and engineers of 28 years ago.

However, the airport system of this country, and the facilities at most of our airports, are still trailing the development of the airplane and the art of flying. This situation does not permit the citizens of this Nation to enjoy the maximum benefits air transportation has to offer. Therefore, in order to assure that the development of airports keeps pace with the ever expanding requirements of the industry, NASAO recommends early approval of H.R. 13665, with amendments which would—

(a) extend the Federal Airport Act for a minimum of five years; and

(b) increase the annual authorization of funds to \$150,000,000.

It is further recommended that the Committee determine whether all classes and types of airports are being given a reasonable opportunity to participate in the program, and why the annual programs are not released on January 1 each year, as required by law.

The opportunity afforded me to present NASAO's current views and recommendations with respect to the Federal Aid Airport Program and H.R. 13665 is sincerely appreciated.

#### APPENDIX No. 1

##### EXCERPTS FROM AVIATION PUBLICATIONS, APRIL 1966, ILLUSTRATING AVIATION'S CURRENT PHENOMENAL GROWTH

###### April 10, 1966

*Cessna* ups production (civil) 7000 to 8000 units—'66 sales expected to top '65 by 20%—export sales increased 40% during first six months of current year—increasing factory floor space 17%.

*Ozark Airlines*—January–February passenger traffic up 32.3%.

*General Aviation* aircraft deliveries up 42% in first quarter to 3855 units.

###### April 12, 1966

*United Airlines* claims 40% of all adults have now flown commercially—50% will have by 1970—predicts air travel will increase 57% over 1965.

*Jerrie Mock* establishes 4550 non-stop solo, single engine record for women—Honolulu to Columbus, Ohio.

*North American XB-70* reached speed of Mach 3.05 (approx. 2000 MPH) and altitude of 72,000 feet.

###### April 14, 1966

*TWA* sets record for March—sets all-time record for cargo, ton miles up 26.3% over March 1965—passenger miles up 26.3%.

*Frontier* posts 45% profit increase in 1st quarter 1966—as a result of 43% increase in passenger miles flown. All of 1965 increase was only 15%.

*National Airlines* cargo up 32% in March. Mail tonnage up 35%, express 23%. Net income up 42%.

###### April 15, 1966

*New student* starts totaled 94,635 during 1965—up 56% over previous year.

*Mackey Airlines* reports best quarter of passenger traffic in its history—March total of 32,479 passengers—a 25.6% increase over March 1965.

*San Francisco and Oakland Helicopter Airlines* carried 51,000 passengers during first quarter 1966—a 76% increase over same quarter in 1965.

<sup>1</sup> Committee on Public Buildings and Grounds, House of Representatives, 75th Congress, 1988, on H.R. 9016 and 9484, to establish a commercial airport in the vicinity of the National Capitol.



April 20, 1966

*Mohawk Airlines* passenger totals have been increasing so rapidly that 1966 forecasts have been raised 25%.

Passenger total increases 27% in 1st quarter, *Southern Airways* reports.

The CHAIRMAN. Maj. Gen. Louis W. Prentiss.

Mr. WILLIAMS. Mr. Chairman, may I make an observation? The bell has rung for a rollcall. I am not going to make a point of order but the bells have rung for a rollcall and as I look over the list of witnesses remaining I get the impression that all of the witnesses are definitely in favor of the legislation. As a supporter of the legislation and realizing as a practical matter that the committee will not be able at this late date in the session to go into revisions of the Airport Act, but can consider only a simple extension, I would hope that the witnesses who appear before the committee will be willing simply to extend their statements and permit the committee to read their statements because the issue doesn't hinge at this point, I don't think, on revising or modifying the Airport Act, but simply on a simple extension. I would suggest that while we don't want to cut anybody off, obviously, that any witnesses who desire to take additional time, the more time they take the longer we are going to be getting this legislation considered in the executive session.

Mr. PICKLE. Will the gentleman yield?

Mr. WILLIAMS. Yes. The committee will have to break up in a moment.

Mr. PICKLE. I understand. Of the remaining witnesses, in following through with what the gentleman from Mississippi said, is anyone opposed to the legislation?

The CHAIRMAN. The chairman asked that at the start. Your statement will appear in the record if you wish to summarize it briefly.

**STATEMENT OF MAJ. GEN. LOUIS W. PRENTISS, EXECUTIVE VICE PRESIDENT, AMERICAN ROAD BUILDERS ASSOCIATION, WASHINGTON, D.C.**

General PRENTISS. My name is Louis W. Prentiss. I am executive vice president of the American Road Builders Association and with your permission I wish to file this statement and have it appear as though it had been read.

The CHAIRMAN. Yes, sir.

General PRENTISS. Our association has long recognized the need for a balanced transportation program which provides for both air and surface travel and we particularly appreciate the need for adequate highways to serve our existing and to-be-built airfields. We have for years therefore maintained a municipal and airport division within our organization and annually have advocated an adequate Federal-air airport program.

Our membership includes 300 municipal and airport officials and engineers, plus 1,200 county officials, many of whom are directly involved in airport construction as well as the local highway programs serving the airfields.

We believe that the level of authorizations provided for in S. 3096 and H.R. 13665 is the bare minimum necessary for a Federal-aid airport program and we wholeheartedly support this legislation, but with the

hope that the Congress will find a way, within the very near future, to further amend the Federal-aid Airport Act to provide for a sound long-range adequately funded program.

The comprehensive transportation planning processes which are now being carried out in our urban centers must take account of the projected increase in air traffic by the inclusion of plans for adequate airports and access roads. But plans are of little use unless there are ways and means for carrying them out.

In conclusion, Mr. Chairman, I wish to thank you for this chance to appear before you.

(General Prentiss' prepared statement follows:)

**STATEMENT OF MAJ. GEN. LOUIS W. PRENTISS, USA (RET.), EXECUTIVE VICE  
PRESIDENT, AMERICAN ROAD BUILDERS' ASSOCIATION**

Mr. Chairman and Members of the Committee, my name is Louis W. Prentiss and I am Executive Vice President of the American Road Builders' Association.

I am appearing on behalf of our 5400 members and, more particularly, I am appearing in the place of John O. Colonna, Director of the Department of Aviation of the City of Baltimore and President of ARBA's Municipal and Airport Division, who usually testifies for our Association on legislation affecting airport construction. Mr. Colonna is unable to be here today.

Our Association includes within its membership approximately 300 municipal administrators and engineers and approximately 1200 county public works officials and engineers many of whom are directly concerned with the construction and administration of airport facilities.

We are vitally interested in the development of our Nation's air transportation facilities, in the belief that the development of these facilities is essential to the economic growth of the United States and vital to the needs of the National defense.

We have, for many years, held a firm position in favor of a balanced transportation system for our Nation, by which we mean that all modes of transportation should be utilized in such proportions as to assure maximum efficiency, economy and convenience in the transportation of freight and passengers, and that the assistance of the Federal government should be so directed as to bring about the full economical utilization of all modes of transportation.

As this policy relates to the Federal Aviation Program, we have, for many years, advocated the development of a Federal-aid airport system, patterned somewhat after the Federal-aid highway system.

The airport system concept seems to be somewhat harder to understand than the highway system concept. It is easy to visualize an interconnected system of highways, with the main trunk roads supported by the tributary roads which act as feeders and distributors of traffic. Airports, on the other hand, are not physically connected with one another, and the airways, although they are often spoken of as "highways of the air," are comparable to highways only in a limited sense.

Nevertheless, the concept of an airport system is quite practical. The National airport system can, and should, be developed in conformity with a functional classification system similar to that which guides the planners of highway facilities. The Interstate Highway System, for example, is designed in accordance with certain uniform standards, applicable to all of the States. The States have considerable latitude in designing individual segments of the System, but, nevertheless, the Interstate highways have certain characteristics which are important from the standpoint of traffic service, and these characteristics remain the same in every State. The layout of the System is determined by the projected traffic demand in the various traffic corridors.

As this concept could be applied to airport construction, certain cities would be recognized as regional hubs for air traffic movements, and the Federal-aid Airport program would be directed toward bringing the air facilities of these hubs up to specified adequate standards. Other cities of lesser importance in air traffic movements would be encouraged to meet standards appropriate for their air traffic functions.

The development of such an airport system requires a high degree of cooperation between the Federal Aviation Agency, on the one hand, and the State and

local aviation authorities on the other. The Federal-State cooperative procedures followed in the conduct of the Federal-aid highway program might well be emulated.

Another requirement for the success of a Federal-aid airport program is that it have sufficient continuity to permit the drawing up of long-range plans with some reasonable degree of assurance that means will be available to carry out the plans. The Federal-aid airport program has been beset with so many uncertainties that local planners are never certain that Federal-aid funds will be available when a given project moves to the construction stage. The appropriation of funds on a year-to-year basis is unsatisfactory for airport aid, because of the time required to plan and design airport improvements.

Despite the fact that the Federal-aid airport program has failed to keep pace with the growth of aviation in this country, aviation continues to grow at a phenomenal rate. Within the next ten years, the number of airline passengers is expected to double. The number of aircraft landings and take-offs will likewise double. General aviation—with its great potential for spurring economic development by encouraging the growth and dispersal of industry—will grow even faster than airline operations. The number of aircraft involved in general aviation will increase from 97,300 in 1965 to at least 125,000 in 1975.

A ten-year national airport development plan is needed, with sufficient legislative authority behind it to give reasonable assurance that sufficient Federal aid will be forthcoming to carry out the plan.

Within the next four years, we need to put at least \$2 billion into the development of our airports, just to keep pace with the growth of aviation. As determined by the 1965 National Airport Survey, conducted by the Airport Operators Council, the American Association of Airport Executives and the National Association of State Aviation Officials, State and local funds will be forthcoming to meet more than half of the indicated need, provided that Federal aid of about \$628 million can be obtained. Without the stimulus of Federal aid, the pool of State and local funds which will be made available will be diminished. Thus, the Survey indicates, a Federal aid program providing \$157 million per year for the next four years would do no more than keep pace with the need for airport facilities.

As airport facilities become more crowded, flying will become more hazardous and less efficient.

To delay the start of an adequate airport program would only compound the difficulties. We speak on this point with the authority of long experience with highway programs, which involve many of the same engineering skills, many of the same materials, and many of the same contracting organizations which are involved in the paving of runways and aprons. Construction costs and, to an even more marked degree, the costs of acquiring land, are constantly rising. The cost of doing a given amount of airport construction work will be higher next year, and the year after, than it is now.

Highway construction costs have been rising, on the average, about 2½ percent a year. We believe that the general increase in the costs of airport construction is similar.

We wholeheartedly support S. 3096 and its companion, H.R. 13665, as a bill vital to the continued efficiency of air transportation, but with the hope that the Committee will find it possible to increase the level of authorization to \$150 million per year, which approximates justifiable requirements.

In this connection, it may be of more than passing interest to this Committee to note that the President has recommended the transfer of the revenue from the Federal tax on aviation gasoline, amounting to approximately \$28 million per year, from the Highway Trust Fund to the general fund of the Treasury. If this recommendation is adopted by the Congress, the application of these new funds to bolster the Federal-aid airport program would appear to be sound and well founded.

As a supplement to this statement, we request the inclusion in the record of a pertinent resolution adopted at the 64th Annual Convention of the American Road Builders' Association last February.

Mr. Chairman, we are grateful for this opportunity to appear before your distinguished Committee and express our views. Thank you.

## FEDERAL-AID AIRPORT PROGRAM

## A Resolution Adopted by American Road Builders' Association

Whereas air transportation of freight and passengers is an important and growing part of the National economy; and

Whereas the extension and improvement of the National Airport System is essential to keep pace with the growth of both common carrier and general aviation; and

Whereas efforts are being made to reduce by \$21 million, the Federal-Aid appropriation for the 1967 fiscal year; and

Whereas studied investigations have indicated a need for Federal-Aid at the rate of \$157 million per year; and

Whereas a large proportion of air movements are interstate movements, and hence, clearly a matter of Federal interest: Now therefore be it

*Resolved by the American Road Builders' Association in Convention assembled at Denver, Colorado, this 23rd day of February, 1966, That the current level of appropriations now in force for Federal-aid for airport construction be continued as the absolute minimum; and be it further*

*Resolved, That the Association reaffirm its position in support of a more comprehensive and effective Federal-Aid airport program at the earliest possible date, based on State-Federal cooperation; and, specifically, an extension of the Federal Airport Act for five years, providing for Federal-aid at the level of \$157 million per year.*

The CHAIRMAN. That is very brief. Thank you, General Prentiss. We are sorry that this has occurred but the House is in session now earlier than we anticipated, and we just didn't mean to make it that fast.

I understand the next three witnesses have agreed to insert their statements in the record. We appreciate that. The committee will have these statements before them when they consider this and, as Mr. Williams has so well said, this is merely an extension of the act and we cannot anticipate going through any ramifications and revising the law at this time.

(Statements submitted for the record follow:)

## STATEMENT OF DAVID H. SCOTT, EXECUTIVE VICE PRESIDENT, THE NATIONAL PILOTS ASSOCIATION

The National Pilots Association supports H.R. 13665, a Bill to Amend the Federal Airport Act. In our opinion this Bill, which provides for authorization of \$225 million for a period of three years is the minimum amount needed to provide for airport development.

Continued expansion of the nation's airports are essential if the needs of the travelling public and civil aviation are to be met during the coming years. The introduction of medium range jets by the scheduled airlines and the very large increase in general aviation flying require the modernization of present airports and the building of many new ones. The present overcrowding of Washington National Airport is a dramatic illustration of how some public airports have failed to keep abreast of the soaring rise in air travel. Other large cities already have or will have similar problems unless plans can be made promptly to provide more airports or greatly enlarge the present ones. It takes little imagination to visualize what will happen at our major airports when the "jumbo" jets go into service during the closing years of this decade. Plans for handling these very large aircraft must be made now.

Satellite airports around the major cities are needed to relieve some of the pressure of general aviation aircraft movements from the large airline terminals. General aviation can use the smaller fields and will do so if these airports are convenient to ultimate destination. For this last reason we question whether \$7 million a year for general aviation is adequate. It is conceivable that money spent on airports for general aviation can ease traffic problems and indirectly improve safety at major airports and therefore prove more effective than an equivalent sum spent directly on the major airport itself.

This Committee is well aware of the importance of general aviation to the total transportation system in the United States. According to a recent survey

of the Federal Aviation Agency general aviation carried 40 million passengers on inter-city flights in 1965 which is half the number carried by the scheduled airlines in the same year. And general aviation growth in passenger miles flown continues to grow at a rapid rate each year. General aviation can and does serve over 9,700 airports in this country while the scheduled airlines operate from only 600. As surface travel continues to become more congested and hazardous we believe that more of the public will turn to the privately owned airplane to obtain the flexibility in transportation that general aviation offers. An adequate airport system in the nation is the backbone of this development.

The light aircraft manufacturers are producing new aircraft at the rate of 16,000 units a year. Almost all of these aircraft, except those used for special purposes such as agricultural application, have some cross country ability. The FAA estimates that approximately 3,400 aircraft are retired each year due to obsolescence, wearing out and through accidents. This leaves a net increase of new aircraft of about 12,500 a year or over 1,000 a month. Where are these additional aircraft to be based if there are not enough airports for them?

A recent survey of future needs for public airport development showed that approximately \$2 billion could be efficiently used for airport development during the period of 1966 to 1969. Most of these funds (about two-thirds) could come from local sponsors. This figure also includes the financing of passenger terminal buildings and other features which are not eligible for Federal Airport Aid. Even so, the remaining \$625 million over a four year period for airport improvement and development indicates that the sum of \$75 million per year is only about half the total of what could actually be spent on this program. The National Pilots Association feels, therefore, that the total of \$225 million over a three year period is a minimum figure.

In conclusion, may we add that we hope this Committee will recommend that the Executive Department use the \$21 million in Federal Funds already appropriated by Congress in fiscal '67 for this purpose. Any cutback would have severe unfavorable effects upon the national air transportation system.

May we express our sincere appreciation for this opportunity to express our views on this important legislation. We recommend that H.R. 13665 receive support from this distinguished Committee.

---

STATEMENT OF JOSEPH P. ADAMS, EXECUTIVE DIRECTOR AND GENERAL COUNSEL OF THE ASSOCIATION OF LOCAL TRANSPORT AIRLINES

My name is Joseph P. Adams. I am Executive Director and General Counsel of the Association of Local Transport Airlines (ALTA)<sup>1</sup> with headquarters in Washington, D.C. Its membership represents a voluntary non-profit association whose members are pledged to "Improve Passenger Travel, Reduce Subsidy and Strengthen Member Airline Finances".

Specifically, I appear as General Counsel of the Association of Local Transport Airlines on whose behalf I urge the passage of H.R. 13665, being a bill to amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes.

The members of this Association meeting in Houston, Texas, November 4-6, 1965, at the regularly scheduled Fall Quarterly Regional Meeting, discussed the renewal of the Federal Aid Airport Act, and adopted a resolution strongly supporting such legislation when introduced.<sup>2</sup> The Annual Meeting the Association held January 24-25, 1966, in Washington, D.C. saw steps taken to enlist the support of each carrier member in providing statistical data which would strongly support the proposed legislation. The carrier members have been enthusiastic in providing the material which is included in this report and basically the statistics indicate that:

- (a) the carrier members of this Association presently serve in excess of 619 airports;
- (b) of this total number, they are presently operating under various weight restrictions in some 263 airports;

---

<sup>1</sup> Alaska Airlines, Alaska Coastal-Ellis Airlines, Allegheny Airlines, Aloha Airlines, Bonanza Air Lines, Caribbean-Atlantic Airlines, Central Airlines, Cordova Airlines, Frontier Airlines, Hawaiian Airlines, Lake Central Airlines, North Central Airlines, Northern Consolidated Airlines, Ozark Air Lines, Pacific Air Lines, Piedmont Airlines, Reeve Aleutian Airways, Southern Airways, West Coast Airlines, Wren Air Alaska Airlines.

<sup>2</sup> Continued support was voted at the ALTA Spring Quarterly Regional Meeting held in St. Louis, Missouri, May 19-20, 1966.

(c) based on equipment planned for delivery within the next 18 months. It is indicated that weight restrictions may be applicable in 115 additional airports:

(d) of the airports discussed in the above capitulation, there are 78 airports presently actively being up-graded and improved under the active cooperation of the civic governing body and the Federal Aviation Agency.

The individual situation concerning each of the carriers, together with their geographical area of operation, is probably the greatest indication of the degree of interest on the part of the carriers and what it means in terms of airline service to the passengers of the 50 States affected. To that end, this statement will now take up alphabetically the situation particularly concerning each of the member carriers.

#### ALASKA AIRLINES

This carrier is presently restricted at four airports out of the ten it serves with Super Constellations and the proposed immediate use of Boeing 727's. The combination of one direction runways and runway lengths is the contributing factor for the weight restrictions.

The full payload and lower operating cost of jets will not be reflected in much lower fares as full advantage cannot be realized. Single runways cause many overflys when wind is wrong with resulting poor service and innumerable passenger misconnects out in remote areas where little or no layover facilities exist. This year one village didn't receive service for 1 week due to wrong direction winds and much of their food, fresh milk and perishables were delayed or frozen due to offloads and transfers.

#### ALASKA COASTAL-ELLIS AIRLINES

This carrier is basically an amphibious type water operator but presently serves six airports and has a Convair 240 order, the operation of which will be restricted at most of these airports by reason of surrounding terrain. The significance of the passage of the instant legislation is best expressed in the words of the carrier:

"We cannot over-emphasize the significance of FAAP to our airline and the passengers we serve, which currently amount to over 130,000 annually. The people of our area (S.E. Alaska), have long been deprived of modern pressurized air service because the absence of airports has restricted air carrier operations to small and inefficient amphibious aircraft which are becoming progressively more obsolescent every year. Only six of some 50 communities we serve in scheduled service have airports. It should be noted that none of the communities in this area is inter-connected with any other by either road or railroad, which means that except for limited ferry and boat service between the major communities, no alternate means of surface transportation exists. The immediate need in our area for airports (let alone airport improvements) is obvious and critical.

"Airport financing for our infant state is a real problem. Currently, our State Legislature is wrestling with this problem in attempting to fund just the State's matching share under the FAAP formula and then only for the more vitally needed airport projects. Unless the FAAP is continued, prospects for any real improvement in airline service or reduction in subsidy are extremely bleak."

#### ALLEGHENY AIRLINES, INC.

The following indicates restrictions by types of planes based on a standard 85° day by aircraft on order and to be placed in service in mid-Summer 1968:

Equipment type	Number of restricted airports	Extent of restriction (as percent of average payload capacity)			
		0 to 10	11 to 25	26 to 50	Over 51
F-27.....	11	0	6	5	0
CV-580.....	9	1	6	2	0
DC-9-30.....	25	1	0	17	7

As a basic proposition, Allegheny believes that any airport certificated for airline service is entitled to the runways and landing aids needed to assure maximum and reliable service.

From their passengers' standpoint, the FAAP program translates into (a) the ability to operate over longer stage lengths, thus reducing intermediate stops and travel time, (b) the possibility of no-change-of-plane service to primary destinations via carrier interchange flights, (c) availability of additional aircraft capacity, in terms of both seats and cargo; this relates also to reducing the oversales sometimes resulting directly from last-minute seat limitations due to a combination of IFR weather and short runways, (d) greater safety, (e) in the case of the Jets it means the comfort and appeal of travel by Jet, (f) the economies of the Jet where it can be operated on an almost unrestricted basis can result in significantly lower fares to the traveling public.

From the community's standpoint, (a) maximum return on their already substantial airport investment, (b) air service fully equal to the larger cities with whom they are competing for new industries and worldwide markets, (c) additional airport income through more flights by heavier aircraft.

From the carrier's standpoint the primary benefits will be (a) an ability to offer better service to the traveling and shipping public, (b) increased revenues coupled with the lower operating costs resulting from longer stage lengths and selection of low-cost refueling points can make a major contribution to the financial strength of the Regionals. A direct and desirable by-product of this is a clear possibility of a lower annual subsidy bill.

#### ALOHA AIRLINES

Aloha Airlines serves six airports, two of which are presently served by F-27's and Viscounts with weight restrictions and when the carrier inaugurates service with the BAC 111, it will meet weight restrictions at two additional airports.

One of Aloha's major reasons for desiring extension of Federal Aid Airport Program is to enable them to have an airport at Kona of adequate size to cope with the new equipment which they will be operating. At the present time Aloha is operating F-27 aircraft, Viscount 745 aircraft and will soon add the BAC 111 aircraft. For obvious reasons, they will like to reduce to at least two types of aircraft on their system; however, the F-27 aircraft cannot be released due to the fact that it is the only airplane in their fleet which can serve the Kona Airport with its limited runway.

#### BONANZA AIR LINES

Bonanza Air Lines serves 19 airports at which it is presently restricted on weight at 11. These weight restrictions are effective on the F-27 at four airports, and the DC-9 at seven airports. The take-off weight limitation is due exclusively to inadequate runway lengths.

The Federal Aid Airport Program is important to Bonanza. For example, when the length of a runway is extended, the payload capabilities of an aircraft increases and thus can be better utilized. A direct result of this is better service to the public. Airport improvements under the program have enhanced safety and aircraft reliability.

#### CARIBAIR

This carrier serves 10 airports at which weight restrictions are presently in force at 4 airports by reason of the use of the modern turbo jet CV-640. The carrier has on order a DC-9-30 aircraft and these weight restrictions will apply at four additional airports. Four of the above listed airports are presently engaged in active application for FAA airport matching funds to eliminate the necessity for the present weight restrictions.

Caribair feels that the extension of the Federal Aid Airport program is of great significance to the airline industry, as well as Caribair, in order to better serve our flying public. Two of the airports that they now serve: namely, St. Thomas and St. Croix, provide the only means of air transportation to and from the Island; this includes passenger, mail and cargo services.

Furthermore, Ponce and Mayaguez in Puerto Rico would be limited in operation due to the fact that Caribair is converting its Convairs to turbo props and will be operating pure jets in the near future. Caribair feels that the economic effect on the public of Ponce, and Mayaguez would be greatly hampered if the airports are not provided with Federal aid in order to accommodate modern day aircraft.

## CENTRAL AIRLINES, INC.

Central Airlines operates on an extensive six-state system with 3,000 unduplicated route miles and serves 61 airports.

With the operation of new turbo prop Convair 600 equipment it develops that the carrier will suffer weight restrictions at approximately thirty of these airports. With but two or three exceptions where obstructions are a problem, all of these weight restrictions stem from runway-length restrictions.

## CORDOVA AIRLINES, INC.

The Federal Aid Airport Program is vital to every Alaskan. At 8 airports served by Cordova Airlines the airplane is the sole means of transportation except for a seasonal freight boat.

Better and more economical service with better and more economical equipment are severely hampered by the incompatibility of proper airports to aircraft.

Communities such as Cordova, Cape Yakataga and Seldovia generate from two to four times their regular population annually. The City of Seldovia, wholly dependent on air, which can only accommodate small aircraft on its 2100' field, has a critical need for a DC-3 size field.

Six airports that should have Convair service are limited to DC-3 and Widgeon service. Community interest is further restricted by two or more type aircraft service that should have single plane Convair service as is the case of Cape Yakataga on the Anchorage-Cordova-Yakutat-Juneau route, and Seward on the Anchorage-Soldotna route.

F.A.A.P. is the only means possible to finance improvements to communities in need of better and more economical air transportation that in many cases is the only form of transportation. The tremendous growth in oil, timber, fisheries, minerals and tourism require the extension of F.A.A.P. over the routes of Cordova Airlines as well as the other Alaskan Certificated Carriers.

## FRONTIER AIRLINES, INC.

This carrier serves 59 airports and presently is restricted at 25 of the airports by reason of 11—runway length; 9—runway length due to gradient; 1—runway length and obstruction; and 4—runway length and strength.

Five airports that are presently being considered for Boeing 727 service will need improvement in runway length and strength. Ten airports served by Frontier will require airport improvements when DC-3 equipment is replaced by Convair 580 equipment.

Eight of the airports included in the above lists are currently engaged in active application and processing of FAA airport matching funds to improve airport adequacy.

There are only a few remaining cities on Frontier's system which do not have airports which are reasonably adequate for Convair 580 operations. Frontier's experience with the replacement of DC-3 aircraft with the larger, faster, more comfortable Convair 580 has demonstrated that the larger aircraft generate substantially more traffic than the DC-3's to the extent that the operations of Frontier's services with the Convair 580 is more economical than the operation with DC-3 equipment.

The failure to carry through with the few remaining airport projects would seriously handicap Frontier in its efforts to upgrade its entire system to the turbo-powered Convair 580 equipment. The number of airports which are not adequate to handle this equipment are so few that it is possible Frontier would have to seek suspension of service at those cities which have not been able to upgrade their airports since the operation of a fleet of DC-3 aircraft for these relatively few isolated cities would be economically impractical.

It is of importance to note that generally the cities which now need funds for the improvement of their airports are cities which have relatively few financial resources to carry out such projects since they are small cities having relatively limited revenues from their airports. These cities probably have a more acute need for federal assistance than many cities which have already been provided with such assistance under the Federal Aid to Airports Program.



## HAWAIIAN AIRLINES

Hawaiian serves nine airports and presently is operating with weight restrictions at six. The present equipment and restrictions are as follows:

[In pounds]

	Takeoff	Landing
Convair 440/440.....	4,000	4,000
Convair 440 (340D).....	11,000	12,000
Douglas DC-9.....	10,000	10,000

The average weight loss is from runway limited airports. No all six equally restricted. Restrictions are weight reductions from maximum allowable landing and takeoff weights.

The State of Hawaii is in no position financially to maintain and improve its airport system. Without additional revenue or matching funds from the Federal Aid Airport program, improvement and expansion of present airport facilities would literally be nonexistent.

It is conceivable that the State of Hawaii could gain self-sufficiency of its airport system through an increase of taxes and landing fees. However, since eight of the nine airports in Hawaii are served by only the local carriers, we would be in no position to carry this burden.

## LAKE CENTRAL AIRLINES

Lake Central Airlines serves 37 airports and operates under varying weight restrictions at 30 of the airports. These restrictions are related directly to runway lengths and obstructions.

The Federal Aid Airport Program takes on added significance this year with the knowledge that U.S. air carriers are undertaking aircraft expansion and equipment programs for the period 1965-69, which tops 3.7 billion dollars.

The airline initiative in investing high sums of money in jet aircraft to enlarge and upgrade air transport service for the shipping and traveling public must be met with a concurrent commitment to develop the national airport system. To the extent that this is done, the new and improved equipment can be operated to full potential at the more than 600 airports served by the airlines throughout the United States.

## NORTH CENTRAL AIRLINES, INC.

North Central serves 67 airports and because of inadequate runways operates under weight restrictions at 30 of them. These airports are served presently with Convair 440 equipment.

With the implementation of five DC-9's on North Central's routes in 1967, they will suffer moderate to severe weight restrictions at 20 of the 27 airports due to receive this service.

At the present time, there are several airports which are inadequate for Convair 440 aircraft. When the DC-3's are retired in 1967, it may be necessary to temporarily suspend service to several of these airports if runway extensions have not been completed. We would not plan to delete any of these cities on a permanent basis.

The Federal Airport Aid program has been invaluable in enabling North Central to provide service to many small cities where local funds would never have been adequate to construct an airport capable of handling large aircraft. Since most of the local service carriers will soon be inaugurating jet service to many communities, it is absolutely essential that FAAP funds be available so that service to the traveling public may be upgraded.

There are many cities on North Central's system where the local tax base is so small that needed improvements would be impossible without aid from the Federal Government. If these cities are to be incorporated into the national transportation system, it is essential that they have facilities adequate to handle modern aircraft.

## NORTHERN CONSOLIDATED AIRLINES

Northern Consolidated serves 19 airports with large aircraft and 25 airports with small aircraft. At the present time they operate under weight restrictions

at four of the airports for large aircraft. The weight restrictions involved in the shorter airports are on their Fairchild F-27B aircraft.

Northern Consolidated is presently restricted in the F-27 aircraft at four airports. The same four airports will be further restricted with Boeing 737 equipment to such a degree that the airports will not accommodate the new plane. Northern Consolidated has on order at the present time one Boeing 737 with an option for another.

All of the airports involved in restricted takeoff weight for the F-27 and the proposed Boeing operation are State owned airports. Northern Consolidated made application through ATA Master Airport Plan for the State of Alaska to upgrade these airports to a minimum of 5750 ft. and surfacing, which will permit maximum landing weight, but still have a restricted takeoff weight. The flow of traffic is not critical on the takeoff weight of the outlying intermediate airports as much as the landing weight so that the maximum takeoff capability could be provided on all aircraft departing Anchorage and other main bases. As a result of the application, a Bill has been submitted to the State Legislature, HB 412, providing for the issuance of general obligation bonds in the amount of \$11,500,000. The purpose of the bonding issue is to upgrade restricted airports owned and operated by the State of Alaska to a minimum standard that will permit jet age aircraft. This not only applies to Northern Consolidated's routes but to the routes of other Alaskan certificated carriers.

Extension of the Federal Airport Aid program is vitally essential to the normal growth of the State of Alaska by participating with the State to provide airports necessary for better transportation. Jet aircraft will provide a more economical transportation system, resulting in reduction of rates to the general public and assist in the growth of the State. The proposed bonding issue exceeds somewhat the amount of money presently available through the current FAAP. The bonding issue is not sufficient to match the FAAP money to the extent of airport construction and airport upgrading. Continued participation by the Federal Government through the FAAP is very essential to the needs of the State of Alaska and to its economic development. Many of the airports served by Northern Consolidated and other certificated carriers are served practically 100 percent by air with the exception of limited boat transportation in the summer months. The remaining part of the year . . . 100 percent requirement for all transportation is by air. Tremendous progress has been made in the State of Alaska since inception of the FAAP. Its continued authorization is vitally required.

#### OZARK AIR LINES

Ozark Air Lines provides service to 48 airports and is restricted on their DC-3 aircraft at one airport; on their M-404 aircraft at 6 and on F-27 aircraft at 12. The carrier states that as a general runway requirement for these aircraft to operate unrestricted, the following runway lengths would apply:

	Feet
DC-3 -----	3,600
M-404 -----	5,000
F-27 -----	5,800

With the addition of the new FH-227 aircraft, the carrier will suffer weight restrictions at 29 additional airports and with the implementation of DC-9 jet aircraft at 16 additional airports.

It is most important that the Federal Aid Airport Program be not only extended, but increased. Ozark is carrying out an airport survey, including visits to 23 of their cities. It is their intention to inform these communities of their requirements for new equipment and to impress upon them the importance of making airport improvements so that they will not suffer service restrictions when the new equipment is introduced. They are also pointing out that the cost of their re-equipment program is in the neighborhood of 55 million dollars which, of course, represents an investment for service improvement of over one million dollars per city that they serve.

It is significant to note that of the 21 cities visited to date, only 3 of these do not have plans for runway improvements. From this, it is apparent that the FAA is going to have many more applications for aid than they will have money to appropriate and, obviously, a great number of these applications will have to be disapproved for lack of funds. If Ozark's region is representative of the other areas with respect to number of applications, it is obvious that this will become a problem of national importance having great impact on the service capabilities of the local service industry as a whole.

Since the role of the local service carriers in the national transportation system is destined to increase greatly in importance in the next few years, it is obvious that this legislation carries the greatest significance for both the industry and the communities that they serve.

#### PACIFIC AIR LINES

Pacific Air Lines serves 30 airports and presently operates under weight restrictions at 7 due to runway length, temperature, terrain clearance, and runway width.

The limiting factors of an airport which vary the payload capabilities of an aircraft indirectly result in a disservice to the airline passenger. For example, obstructions or runway limitations could result in the refusal of passage to several passengers who have made the trip to the airport expecting to be boarded.

#### PIEDMONT AIRLINES

Piedmont Airlines serves 43 airports and presently operates under weight restrictions at 21 where it is using F-27's and M-404's due to inadequate runway lengths.

Ten of the 21 above listed airports are currently engaged in active application for FAA matching funds to improve or eliminate the airport deficiencies stated above.

From the above it can be readily ascertained that approximately 49% of the airports that Piedmont serves are inadequate for full gross loads. Most of this inadequacy is due to insufficient runway lengths and a few because of obstructions in the approach area of the runway. Because of the load restrictions often times it is necessary to unload freight and express and defuel the aircraft in order to accommodate the passenger load. Again, at times, with marginal weather, passengers are unloaded to accommodate the necessary fuel for the alternate airport required for IFR operations.

Another problem which exists on the Piedmont system is the non-existence of adequate landing aids for some of our airports which have sufficient runway length for full gross loads. Such airports have to be overflown because of the high weather minima established for that particular airport. As an example, Roanoke, Virginia (enplaning 119,862 passengers and deplaning 108,735 passengers in 1965), has runways of adequate length to accommodate full gross loads for our present aircraft; however, airline landing weather minima for that airport require no less than 1000' ceiling and three miles visibility.

The Federal Aid Airport Program should be continued so that all communities can eventually have first class airline service as well as be beneficial for defense purposes.

#### REEVE ALEUTIAN AIRWAYS, INC.

Reeve Aleutian serves 16 airports and presently operates under weight restrictions at 7.

Curtis C-46 and DC-3 type aircraft are being used due to runway length insufficiencies to handle DC-4 and DC-6 type equipment.

The carrier has not ordered new equipment pending the solution to the present airport inadequacies. Two of the fields found presently inadequate are USAF and the balance are State fields and no funds are available at present.

Reeve Aleutian cannot operate an effective economical airline with the present weight restrictions. The carrier states that the life blood of these Alaskan communities are predicated on adequate air service.

#### SOUTHERN AIRWAYS, INC.

Southern Airways is presently serving 49 airports and 17 of these are served under weight restrictions during hot weather and with zero wind conditions. Fifteen of these airports are presently being served with M-404 aircraft and two airports being served with DC-3 aircraft. In all cases the payload is restricted due to effective runway length.

New aircraft (DC-9) on order will have payload restrictions at five airports in addition to the 17 listed above. As a result of the phase out of the DC-3, the M-404 will have payload restrictions at two additional airports to those listed above. The extension of the Federal Aid Airport Program is of the greatest significance to the air traveler as inadequate or restricted facilities may affect safety; and, second, due to payload restrictions, Southern reduced fuel loads.

from originating points in order to accommodate available payload. This results in frequent en route refueling at points less well equipped for fueling service, causing delay in trip completion. During hot weather days, Southern is subject to leaving express and freight in order to accommodate passenger loads.

The net result of payload restrictions is inconvenience to passengers through fueling delays and to shippers through failure, in prompt delivery of express and freight, all of which adds up to poor, or less than the best service.

#### TRANS-TEXAS AIRWAYS

Trans-Texas Airways serves 49 airports and weight restrictions have not been significant with DC-3 and Convair 240 aircraft. The carrier is re-equipping with Convair 240D (600) which is a turbo prop modernization and at this writing the effect of the new aircraft on airports served has not been completely analyzed.

The carrier has on order jet planes and with the inauguration of this planned DC-9 service, it will be economically impossible for many of the cities they serve to provide adequate runway and navigational aids without the continued support of the Federal aid to the airport program, thereby, depriving many of their passengers of improved air service.

#### WEST COAST AIRLINES

West Coast Airlines serves 42 airports and at present operates under weight restrictions at 15. F-27 equipment is used at all but five of the restricted airports. Three of the five airports will not handle an F-27 aircraft. Restrictions are runway lengths, in all cases.

The carrier has ordered DC-9 aircraft and states that four additional airports will be unable to handle the DC-9 in the area in which it will probably be scheduled.

Many communities now being served by each local service airline have airports that were originally intended for general aviation use only. These airports have been only partially adequate in size and runway length. Practically every community has grown at a greater rate than its airport capability. To keep abreast of the community growth rate, the air carriers have been required to acquire and operate larger, faster aircraft, which are of a modern design and require larger airports. From this, it seems obvious that the Federal Aid Airport Program should be extended to provide communities the opportunity to use the new services being offered by the local airlines.

#### WIEN AIR ALASKA

This carrier is presently serving 26 airports with large aircraft and 60 airports with small aircraft. Of the airports served by large aircraft 21 are gravel surfaced imposing a 3% length restriction on their L-749 Constellation and Curtiss C-46's and a 7% penalty on their Fairchild F-27's.

A high percentage of the localities served by Wien Air Alaska are totally dependent on air transportation through the winter months and in the summer some have limited boat transportation.

Wien Air Alaska has on order one Boeing 737 with an option for another. With the advent of the new equipment they will suffer an additional penalty on the majority of airports served due to existing length.

The Alaska State Legislature is now considering a bill providing for the issuance of general obligation bonds for the purpose of improving State owned airports to meet the demands of the anticipated Jet Traffic. Participation by the Federal Airport Aid Program with the State is most essential to the growth of the State of Alaska through air transportation.

In conclusion then, it is the unanimous opinion of the members of this Association that passage of H.R. 13065 is in the public interest in the broadest political, social and economic sense. Further, it is a necessary legislative step to insure that the encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the postal service and of the national and civil defense continue unabated.

In closing, I should like to express the individual appreciation of each of the managements of the air carrier members of this Association for the oppor-

tunity to appear before the distinguished members of this Committee in support of H.R. 13665, legislation so vital to the continuing economic strength and growth of not only our short-haul air transport industry, but of the entire economy.

---

STATEMENT OF CLIFTON VON KANN, AIR TRANSPORT ASSOCIATION OF AMERICA

My name is Clifton von Kann. I am vice president—operations and engineering of the Air Transport Association of America. The Air Transport Association is the trade association and service organization of the certificated airline industry and our membership includes substantially all of the U.S. scheduled airlines.

We are pleased, Mr. Chairman, to have this opportunity to appear before this committee to express our continuing support of the Federal Airport Aid Program and urge this committee's favorable endorsement of H.R. 13665. A companion bill, S. 3096, has been passed by the Senate.

It has been a little more than 20 years since the Federal Airport Act was first enacted. This event in May of 1946 initiated the development of a truly national system of public airports designed to meet the expanding air commerce needs of this nation.

Since the initiation of this federal assistance program, a little more than \$750 million of federal funds has been expended and these funds have been matched locally for a total cooperative program of approximately \$1½ billion. Included in the program have been over 6,000 projects at more than 2,000 public airports.

Far more important than the expenditure of funds has been the contribution of the Federal Airport Aid Program to an orderly and systematic development of this nation's public airport system. The program has resulted in an integrated airport system based upon uniform considerations as to size, locations, runway lengths, approaches, lighting, air traffic control, and similar facilities. Without the federal guidance provided through the program, this country's airport system would have developed in a haphazard manner with under-development at some locations and over-development at others. Granted, there are many deficiencies evidenced by our airport requirements at the moment; but we are sure that there would have been many more but for the uniform standards furnished by this airport program.

In the testimony which we presented to the Senate Commerce Committee on S. 3096, we urged amendment to the proposed legislation so as to extend the term for five years instead of the additional three years provided in the introduction. We also urged that the authorized appropriations be increased from \$75 million to \$100 million per year. These amendments to the Administration's requested legislation were not approved by the Senate because of the many other substantial and pressing Federal commitments, both domestic and international. We still feel strongly that legislation should be expanded and extended as we suggested, but we realize that this is not a realistic hope at the moment. In the interest of prompt enactment of extension legislation, we will not urge these amendments here today. Hopefully, time still remains during the 89th Congress to permit an appropriation to provide funds for the fiscal 1968 program, thus continuing the practice of two year forward funding. This practice has permitted a more orderly planning of individual airport development programs since it has given the sponsors some assurance of continuity and likelihood of continuing grants-in-aid.

The airline industry knows full well the need for a continuation of this federal program. The air transportation industry is growing at an incredible pace. In 1966, despite the strike, the airlines will carry 112 million people, almost double the number they carried only five years ago. Our industry is gearing up to double, and perhaps more than double, within the next five years. It is likely that the airlines will carry some 200 million passengers in 1970. This fantastic growth rate far outpaces every other major segment of the economy and underscores the need for an airport system which will keep pace with and match these growth requirements.

The airlines have had to match their burgeoning passenger and cargo needs with huge investments in new aircraft. They now have an order for delivery through 1970 equipment valued at over \$4½ billion, with options for 265 other aircraft expected to cost \$1.9 billion more. A very substantial portion of these anticipated expenditures is attributable to the so-called "second generation" of jets—the Boeing 727 and 737, the DC-9, and the BAC-111—all short and

medium range aircraft designed to meet one of the airlines' primary goals: better and faster air service for the small and intermediate cities.

The local service carriers, as well as the trunks are ordering these fast new airplanes to replace the venerable DC-3's. This new era of service to the smaller areas has already begun. But this new blessing brings with it problems to many small airports. Runways need lengthening and strengthening. Perhaps new navigation and approach aids or runway lights will be required before service can be improved. And, of course, the rapidly expanding number and increasingly sophisticated nature of general aviation aircraft make growing demands upon all airports, large and small. The requests for Federal airport aid as a result far exceed the amount of money available to FAA for this purpose. The lack of airport capacity due to inadequate facilities looms as perhaps the most pressing, critical problem facing the aviation industry and the air commerce of the United States in coming years. Airport operators must in many cases depend on Federal aid to help them meet the problem.

The airlines, too, must make heavy investments on the airports for facilities to give adequate service to this mushrooming traffic. The air carriers expect to invest at least \$350 million in capital construction items on public airports over the next four years. The airlines are deeply involved financially with airport improvements in order to make sure that the airports will be ready to accept the most modern aircraft and to adequately serve the hundreds of millions of passengers.

I do not wish to close my testimony, Mr. Chairman, without emphasizing the fact that an airport benefits a far wider segment of our population than just the airlines or the air passengers. An adequate public airport is much more than just a local asset and such a facility's value is even greater when it is integrated into an orderly, planned national airport system. Our public airport system is vital to our nation's defense and makes an enormous contribution to the continuing growth of our total economy.

The need is clear. We respectfully urge approval of this legislation so that the federal airport assistance program may continue to lead the way to a better airport system—a system which we hope, in the future, may accommodate the total aviation requirements of the most advanced and prosperous nation on earth.

---

ASSOCIATION OF COMMUTER AIRLINES.

Washington, D.C., September 26, 1966.

Re Airport Aid.

Hon. SAMUEL N. FRIEDEL,  
Chairman, Aviation Subcommittee,  
Interstate and Foreign Commerce Committee,  
U.S. House of Representatives,  
Washington, D.C.

MY DEAR MR. FRIEDEL: We request that this statement be included in the printed hearings on renewal of the Federal Airport Program.

The commuter airlines are concerned with the increasing problems of congestion at major air terminals. In the case of Washington National, it was proposed to limit the number of movements per hour so it would be difficult for others than scheduled transport airlines to land.

One important function of the commuter airlines is bringing passengers and cargo from outlying communities into the hub airports for interconnection. To reduce congestion, it is urgent that steps be speeded to construct and improve outlying airports for general aviation traffic that does not have to interconnect.

In the 1961 Act and its renewal, Congress appropriated \$7 million per year for this specific purpose. But little of this sum has been spent as intended: the money has gone largely as a discretionary fund for general aviation fields for smaller communities.

We urge that in renewing the program for another three years, this \$7 million per year be continued strictly for projects within the proximity of hub airports and not for other purposes. Increasing terminal congestion otherwise can seriously impair the ability of our unsubsidized light air transport industry to speed business travel important to the national economy.

Respectfully,

MERRILL ARMOUR,  
Executive Secretary.

**Mr. PICKLE.** I would like to add, Mr. Chairman, and to observe that Mr. Lester is here as a representative of Gen. Joe Adams, that we missed the general being here to give us "heck." We invite him back soon.

**The CHAIRMAN.** With those remarks the committee on this legislation will stand adjourned.

(Whereupon, at 11:18 a.m. the committee was recessed subject to call.)















1  
2

3  
4

5

6

7



